

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4949 of 2013 (O&M)

Date of Decision: 08.04.2019

Gurbachan Kaur and others

..... Appellants

Versus

Jagir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants.

Mr. K.K. Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants through their LRs are in the regular second appeal against the judgment passed by the First Appellate Court granting alternative relief i.e. refund of the earnest money in place of relief of specific performance of the agreement to sell.

The execution of the agreement to sell dated 19.02.1999 with respect to the land measuring 210 kanals 17 marlas at the rate of Rs.1,50,000/- per acre (8 kanals) and payment of earnest money of Rs.2,00,000/- is not disputed between the parties. As per the agreement to sell, the sale deeds of the entire land were agreed to be registered in three parts. The plaintiffs were required to get the sale deed registered of 96 kanals land upto 25.09.1999. Next sale deed with respect to the land measuring 64 kanals was required to be executed and registered on

19.01.2000. On that day, the plaintiffs were also required to pay the earnest money with respect to the land little bit more than 7 acres of land. It is further undisputed that the plaintiffs paid Rs.1,00,000/- as additional payment on 11.03.1999.

The execution of various sale deeds with respect to 108 kanals land before 25.09.1999 are not disputed. However, from here onward, the dispute starts. The plaintiffs claim that they were ready and willing to perform their part of the contract whereas defendants claim that the plaintiffs were not ready and willing to perform their part of the contract. It will be noted here that the plaintiffs got registered FIR against the defendants bearing No.290 dated 19.12.1999 alleging that a fraud has been committed by the defendants. Later on, the aforesaid FIR was cancelled. The plaintiffs also claim that it was stipulated in the agreement to sell that in case if some part of the land is under litigation, the time for execution and registration of the sale deed would stand extended. The plaintiffs have claimed that they were ready and willing to perform their part of the contract on 19.01.2000 whereas defendants did not come forward. On the other hand, the defendants plead that the plaintiffs were never ready and willing to perform their part of the contract.

Learned First Appellate Court on re-appreciation of evidence has held that the plaintiffs are only entitled to refund of the earnest money.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel appearing for the appellants has stated that the First Appellate Court has erred while returning a finding that the

plaintiffs were not possessed of sufficient means to get the sale deed executed on 19.01.2000. While elaborating, he has submitted that the plaintiffs had sold the properties through sale deeds Ex.P-A to P-E for a sum of Rs.22,68,282/- out of which sale deeds were got registered from the defendants with respect to 108 kanals land on payment of Rs.20,27,798/-. Thus, balance amount approximately Rs.2,40,000/- was available with the plaintiffs out of the sale consideration received. He further drew attention of the Court to Ex.P-F and P-G, execution of further sale deeds the plaintiffs received Rs.6,84,844/-, hence, counsel submitted that Rs.9,25,333/- was available with the plaintiffs from the sale consideration itself and thus, the finding of the First Appellate Court is erroneous. He further submitted that a litigation was pending as Gurnam Singh has obtained injunction with regard to 21 kanals of land and therefore, the time for execution and registration of the sale deeds as per contract stood extended. He further submitted that there was another litigation against Jarnail Singh and therefore, the sale was not executed.

On the other hand, learned counsel for the respondents has submitted that the plaintiffs were required to get the sale deed executed with regard to 64 kanals land upto 19.01.2000. On that day, the plaintiffs were also required to pay the earnest money with regard to 7 acres of land. He further submitted that presence of the plaintiffs on 19.01.2000 before the Sub-Registrar has not been proved. He further submitted that the present suit was filed on 14.06.2000 by which time sale deed of the remaining land i.e. 50 kanals 17 marlas to be executed as per the agreement on 22.05.2000 was over. Hence, the plaintiffs were required to plead and prove that they had sufficient amount to pay the sale consideration of

remaining 102 kanals and 17 marlas of land which would be much more than Rs.18,00,000/-. He further submitted that the defendants even after filing of the suit, offered to sell undisputed area by filing an application but the plaintiffs did not come forward. He further drew attention of the Court to the complaint submitted by the Sub-Registrar when the plaintiffs threatened him and wanted to get their presence recorded without waiting for defendants. It will be noted here that the defendants before filing the suit had called upon the plaintiffs to come and perform their part of the contract and since the plaintiffs did not come forward, they filed a suit for declaration that the agreement to sell has come to an end and the earnest money stood forfeited.

This Court has analyzed the arguments of learned counsel for the parties and find substance in the argument of learned counsel for the respondents.

No doubt, as per the agreement to sell, the sale deeds with respect to 96 kanals were to be got executed upto 25.09.1999 but the plaintiffs had got executed the sale deeds with regard to 108 kanals of land. Thus, with regard to 12 kanals of land, the sale deeds were got executed more than what was agreed to. However, with regard to second part of 64 kanals land, the plaintiffs are not proved to be ready and willing. On that day, the plaintiffs were also required to pay the earnest money of remaining 7 acres of land. The plaintiffs failed to prove that they had sufficient money to pay off the balance sale consideration payable on 19.01.2000 and earnest money. Still further, readiness and willingness of the plaintiffs can be adjudged from the fact that the defendants while appearing in the Court had offered the plaintiffs to get the sale deed executed of undisputed area which

was not under litigation. However, the plaintiffs did not come forward. Still further, the plaintiffs have taken a stand that they visited the office of the Sub-Registrar on 19.01.2000 but Sub-Registrar refused to mark them present under the influence of the defendants and tore the affidavit submitted by them. In this regard, it will be noticed that the plaintiffs have not led any evidence to show that the Sub-Registrar was under the influence of the defendants. The Sub-Registrar had sent a report against the plaintiffs which shows that the plaintiffs went to get their presence marked in the early hours of the day and when Sub-Registrar raised an objection directing them to wait, they did not come back. The report further says that at 4.30 PM, he found certain persons standing near the registration Clerk and they were having affidavit in their hand with fake signatures thereon. When he demanded the said affidavit from them, they tore the same and threatened him.

In view of the aforesaid fact, it is apparent that the plaintiffs were not ready and willing. Still further, the defendants admittedly issued notice to the plaintiffs dated 05.02.2000 to get the sale deed registered with regard to 64 kanals of land by 22.02.2000 and make a payment of Rs.12,00,000/- to them but the plaintiffs did not come forward. Still further, even if the land under litigation, the alleged litigation, although, there was no injunction on alienation as title of the defendants was never in dispute, still the plaintiffs in order to prove their readiness and willingness should have accepted the offer given by the defendants to get the sale deed executed on the day after the filing of the suit.

Learned counsel appearing for the respondents was right in contending that on the day, the suit was filed, the sale deed with regard to

not only 64 kanals land rather 114 kanals 17 marlas had become due, however, even if after adjusting 12 kanals which were got registered by the plaintiffs upto 25.09.1999, still sale deed with regard to 102 kanals 17 marlas was to be registered, the balance payable sale consideration comes to more than Rs.18,00,000/- whereas the plaintiffs failed to prove that they had balance sale consideration.

In view of the aforesaid discussion, the finding of the learned First Appellate Court ordering refund of the earnest money along with appropriate rate of interest does not require any interference.

The pending miscellaneous application, if any, shall stand disposed of in view of the above-said judgment.

Hence, the appeal is dismissed.

08.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No