

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2463 of 2015 (O&M)

Date of decision : 17.12.2019

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Ranjit Singh

.....Appellant

vs.

Gurcharan Singh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. J.S. Bhandohal, Advocate for the appellant.

Mr. G.S. Dhaliwal, Advocate for the respondent.

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H. S. Madaan, J. (Oral)

Briefly stated facts of the case are that plaintiff Ranjit Singh had brought a suit for recovery against defendant Gurcharan Singh on the averments that on 6.2.2006, the defendant had entered into an agreement with the plaintiff for sale of 42 kanal 12 marlas of land situated at village Gurditpura, Tehsil Nabha, District Patiala, alongwith electric motor connection etc., at the rate of Rs.12,25,000/- per acre (8 kanals) and had received Rs.13,50,000/- as earnest money in the presence of marginal witnesses. The stipulated date for execution and registration of sale deed was fixed as on or before 25.5.2006, after getting the sale deed executed and registered in his (defendant's) favour from the original owners. The plaintiff remained

present in the office of Sub-Registrar, Nabha, alongwith balance sale consideration and other expenses for registration of sale deed on 25.5.2006, after informing the defendant in advance. The defendant did not turn up to execute the sale deed in favour of the plaintiff. As per version of the plaintiff, he was always ready and willing to perform his part of the contract but the defendant failed to get the sale deed executed and registered in his favour from original owners Darshan Singh and Harpal Singh of village Gurditpura. Therefore, specific performance of agreement was not possible since the defendant was not owner of the suit land and was not in a position to convey complete title in favour of the plaintiff, therefore, plaintiff brought a suit for recovery of earnest money alongwith interest @ Rs.1.50% per month. According to the plaintiff, the defendant had played a fraud with him and had not returned the earnest money despite repeated requests and reminders, therefore, the plaintiff was compelled to approach the Court for redressal of his grievance by filing the suit in question.

On getting notice, the defendant appeared and filed written statement, contesting the suit. In the written statement, the defendant had raised various preliminary objections to wit that the suit was not maintainable; that the plaintiff lacked locus standi to file the suit; that no cause of action had arisen to the plaintiff to bring the suit; that the suit was not properly valued for the purposes of court fee and jurisdiction; that the plaintiff had concealed the true and material facts from the court; that the plaintiff was estopped from filing the suit by his own act and conduct and that the suit was bad for mis-

joinder and non-joinder of necessary parties. On merits, the defendant admitted that on 6.2.2006, he had entered into an agreement to sell as mentioned in the plaint. According to the defendant, he had already entered into an agreement to purchase the suit land with Darshan Singh son of Bachan Singh and Harpal Singh son of Bhupinder Singh, residents of village Gurditpura, Tehsil Nabha, vide agreement dated 31.12.2005. It had been specifically mentioned in the alleged agreement dated 6.2.2006. The plaintiff alongwith alleged marginal witnesses of agreement to sell, committed a fraud with the defendant in connivance with each other, in as much as after execution of agreement in question, the plaintiff resiled from the agreement and he was not in a position to get the sale transaction completed, so he by levelling false allegations had submitted a complaint to the police against defendant Gurcharan Singh and owners of the property, namely, Darshan Singh and Harpal Singh. An enquiry into the matter was conducted by the police and the complaint was found to be false; as per contents of the alleged agreement, the plaintiff had no remedy available to him to file a suit for recovery and he could sue for specific performance of alleged agreement to sell only; that the plaintiff had connived with owners of the property namely, Darshan Singh and Harpal Singh and latter have resiled from executing the sale deed in favour of the defendant at the instance of the plaintiff. Therefore, the defendant filed a suit for specific performance on the basis of agreement dated 31.12.2005 against Darshan Singh and Harpal Singh, which is pending. The defendant was not owner and in

possession of the property, which was subject matter of alleged agreement dated 6.2.2006, rather he had only entered into agreement to purchase the same from Harpal Singh and Darshan Singh. Defendant denied that the plaintiff remained present in the office of Sub-Registrar, Nabha alongwith balance sale consideration and other expenses or that defendant did not come present for execution and registration of the sale deed. According to the defendant, the plaintiff did not come present to perform his part of contract, therefore, the alleged agreement stood cancelled and the plaintiff was not entitled to recover anything from the defendant. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

The plaintiff filed replication controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled for recovery of Rs.13,50,000/- from the defendant as prayed for ? OPP
2. Whether the plaintiff is entitled to interest, if so, at what rate? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

6. Whether the plaintiff has not come to the court with clean hands and has concealed the material facts from the Court, if so its effect? OPD
7. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD
8. Relief.

In order to prove his case, the plaintiff examined Jagtar Singh as PW-1, Harmesh Singh as PW-2 and plaintiff Ranjit Singh himself stepped into the witness box as PW-3 and thereafter closed his evidence.

On the other hand, defendant Gurcharan Singh himself appeared as DW-1 and closed his evidence.

After hearing the arguments, the trial Court of Additional Civil Judge (Senior Division), Nabha, vide judgment dated 15.1.2013, decided issues No. 1 and 2 in favour of the plaintiff and against the defendant. Issues No. 3, 4, 5, 6 and 7 were decided against the defendant and in favour of the plaintiff. In view of the collective findings on the issues, the suit of the plaintiff was decreed with costs for recovery of Rs.13,50,000/- alongwith interest @ 6% per annum from the date of agreement to sell till realization of entire decretal amount.

The defendant was aggrieved by the said judgment and decree passed by the trial Court and he had preferred an appeal before the District Judge, Patiala. The said appeal was assigned to Additional District Judge, Patiala, who vide judgment and decree dated

13.5.2014 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit for recovery, filed by the plaintiff against the defendant.

Now, it was the turn of the plaintiff to feel aggrieved and he has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent-defendant, who has put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

In this case, a perusal of the agreement to sell entered into between the parties on 6.2.2006 is very necessary. A scrutiny of that agreement Exhibit P-1, goes to show that it is clearly mentioned therein that Gurcharan Singh defendant was not owner of the land which he had agreed to sell with plaintiff, rather he himself had entered into the agreement to purchase the same from owners Darshan Singh son of Bachan Singh and Harpal Singh son of Bhupinder Singh, vide agreement dated 31.12.2005. Photocopy of the said agreement had been enclosed with the agreement between the parties dated 6.2.2006 and it has been mentioned in agreement dated 6.2.2006 in no uncertain terms that by the stipulated dated 25.5.2006 the defendant would either get the sale deed executed in his favour or get the sale deed executed in favour of the plaintiff from the recorded owners. Therefore, plaintiff could not plead that he was not aware of the fact that defendant was not owner of the suit land when he had entered into the agreement to sell the same with the plaintiff. Proper

course for the plaintiff was to file suit for specific performance against defendant Gurcharan Singh impleading the recorded owners of the suit land, namely, Darshan Singh and Harpal Singh and in the alternative he could have sued for recovery of the earnest money paid by him alongwith interest or damages etc. but then he has straightway filed a suit for recovery on the pretext that since defendant had not got the sale deed executed in his favour from the recorded owners, he was not in a position to execute the sale deed in favour of the plaintiff, therefore, recovery of earnest money paid was being sought. The trial Court was also swayed away by those contentions.

The crucial thing which has been ignored in the process was that it is clearly mentioned in the agreement dated 6.2.2006 that the defendant would either get the sale deed executed in his favour before the stipulated date or would get the sale deed executed in favour of plaintiff directly. Therefore, it did not lie in the mouth of the plaintiff to say that since the defendant had not got the sale deed executed in his favour till filing of the suit, the defendant was not in a position to execute the sale deed regarding the suit land in favour of the plaintiff. The other part of the sentence could not be ignored. Therefore, the trial Court clearly fell in error in coming to the conclusion that the plaintiff was entitled to refund of earnest money paid by him to the defendant. It was not so for the reason that plaintiff had failed to establish on record that he has always been ready and willing to perform his part of contract. His lack of readiness and willingness in completion of the sale transaction becomes abundantly

clear when he sued for refund of earnest money with interest instead of seeking specific performance of agreement to sell.

Furthermore, a perusal of the agreement goes to show that there is no clause with regard to the refund of earnest money paid by the plaintiff to the defendant. Rather it is mentioned in the agreement that in case the defendant failed to execute the sale deed in favour of the plaintiff, the plaintiff could get the same executed through process of the Court and in case plaintiff did not get the sale deed executed by the stipulated date, the amount of earnest money would stand forfeited. Thus the remedy available to the plaintiff as per terms of the agreement was to file a suit for specific performance of the agreement to sell and not for recovery of the earnest money paid. Suit for recovery deserved to be dismissed but it was wrongly decreed by the trial Court by mis-appraisal of evidence and wrong interpretation of law. This mistake was rectified by the learned Additional District Judge, by setting aside the judgment and decree passed by the trial Court and dismissing the suit for recovery filed by the plaintiff.

Learned Additional District Judge has observed that the plaintiff had filed a complaint against the defendant, as well as, Darshan Singh and Harpal Singh, original owners of the land in question for playing fraud with him regarding the electric connection in the land in question. In the said complaint he had contended that when he appeared before the office of Sub-Registrar, Nabha, at the time of execution and registration of the sale deed, at that time defendant and Darshan Singh and Harpal Singh had also come

present there to execute and get the sale deed registered in his favour. Further complaint Exhibit D-1 was moved on 26.5.2006 immediately after the stipulated date mentioned in the agreement, in which he had taken a false plea while filing the suit mentioning in the plaint that the defendant had not come present in the office of Sub-Registrar, Nabha, for execution of the sale deed, whereas in his complaint Exhibit D-1, he had stated that defendant alongwith original owners was present in the office of Sub Registrar, Nabha, to execute the sale deed and further the complaint filed by the plaintiff was found to be false by the police. The Enquiry Officer had observed that defendants and others were in a position to transfer the electric connection and no fraud had been committed by them, thus showing that plaintiff was trying to wriggle out of the agreement on one pretext or the other.

Learned Additional District Judge, concluded that the breach of the agreement was on part of the plaintiff himself and he could not take advantage of the same and ask for refund of earnest money with interest. I find that the judgment passed by the learned Additional District Judge, is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Learned counsel for the respondent had referred to judgment *Veena Talwar and others vs. Harkesh and others 2019 (1) CivCC 691*, by a single Judge of this Court, wherein it was observed that “Once readiness and willingness had not been proved, earnest money is deemed to have been forfeited. In such circumstances, trial Court could not have even ordered for refund of the amount in a simplicitor

suit for recovery. The plaintiffs were aware of this fact and intentionally chose not to seek the specific performance of agreement to sell. The lower Appellate Court being the last court of fact and law, in my view, has appreciated the evidence threadbare to form a different opinion than the one arrived at by the trial Court. It is no understandable as to how the plaintiffs purchased the stamp papers on 28.01.2009 when the target date as per the averments in the plaint was 01.01.2009 which was extended to 20.01.2009. The aforementioned point had also been noticed while reversing the finding rendered of the trial Court.”

In view of the above discussion, I do not find any merit in the present appeal.

No substantial question of law arises in the present appeal.

The same stands dismissed.

17.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No