

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3697 of 2015 (O&M)

Date of decision : 29.01.2019

Jagdev Singh

...Appellant

Versus

Jagtar Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Satinder Khanna, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Defendant No.1-appellant is in the Regular Second Appeal against the findings of fact arrived at by the Courts below.

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.

The only issue which this Court is called upon to decide is “whether the Courts have rightly exercised their discretion as per Section 20 of the Specific Relief Act, 1963 in favour of the plaintiff”. Execution of the agreement to sell, exchange of money has been proved and on that aspect, there is concurrent finding which does not require any interference. However, there are certain facts overlooked by the Courts below while exercising their discretion:-

1) Plaintiff filed a suit for possession on 10.12.2001. As per agreement to sell dated 10.12.1997, physical possession of the land was delivered to the plaintiff. However, when he filed the suit in the year 2001, he sought possession by way of specific performance of the agreement to sell. He prayed for decree of possession and there was no assertion in the plaint as to how he is seeking possession although as per agreement to sell, he has been delivered possession. There was no explanation in the plaint, how and when he went out of possession. When plaintiff appeared in evidence, he filed his affidavit in lieu of examination-in-chief on 29.10.2003 but there was no explanation as to how he has gone out of possession. Thereafter, the case remained pending for decision on the application for amendment of written statement. The plaintiff was cross-examined on 02.06.2007. He admitted that the engine through which water is extracted from the tubewell is owned by defendant. He further admitted that he cannot tell name of a person who is owning adjoining property. When he was cross-examined with regard to possession, he stated that he is in possession. He went on to deny that defendant is in possession of the suit property in the capacity of the owners and possession was never delivered to the plaintiff at any point of time. Thereafter, plaintiff filed an FIR in the year 2010 wherein he has asserted that he has been dispossessed on 27.01.2009. There is no evidence as to what has happened in the criminal case registered has been led. Thus, plaintiff did not come to the Court with clean hands.

2) In the present case, agreement to sell is dated 10.12.1997 when land

measuring 19 kanals 2 marlas was allegedly agreed to be sold at the rate of ₹1,60,000/- per acre and earnest money of ₹1,00,000/- was paid. As per the agreement, the sale deed was to be executed and got registered on or before 10.12.1998. There is no evidence to prove any positive step of the plaintiff to get the sale deed executed on or before 10.12.1998. According to the plaintiff, he got sent a telegraphic notice to the defendants to come and execute the sale deed dated 09.12.1998. According to the plaintiff, the defendants did not come forward when he visited the office of the Sub-Registrar. Thereafter, there is complete silence of the plaintiff for a period of complete 3 years. The present suit was instituted on 10.12.2001 i.e. last day of limitation as 09.12.2001 was Sunday-a holiday.

- 3) Still further, defendant had pleaded that in fact he had taken a loan of ₹2,00,000/- in the month of April, 1996 and similar agreement was got signed. He pleaded that he was in urgent need of the funds and since he had good relations with the plaintiff, therefore, the loan was given but agreement to sell was got signed to secure the repayment of loan. It has been pleaded that ₹1,50,000/- was returned and plaintiff demanded interest @ 2% per month which was objected to. Since, the defendant was not in a position to pay the balance amount and interest as demanded, therefore, a fresh agreement to sell was got signed which was only for the purpose of securing repayment of balance amount of loan. A copy of the agreement executed in the month of April, 1996 has been produced but not proved by the defendant.

On the analysis of the factors which have been noticed above, this Court is of the view that the agreement in question was not for sale of the property but was for securing loan as is being asserted by the defendant. Both the Courts have overlooked these facts. Grant of relief of specific performance of the agreement to sell is discretionary and the Courts must apply their mind while granting or refusing the relief of specific performance of the agreement to sell. The Courts are not expected to mechanically pass a decree for specific performance of the agreement to sell once the execution of the agreement to sell is proved.

In view of the aforesaid discussion, the Regular Second Appeal is partly allowed.

The decree for possession by way of specific performance of the agreement to sell is substituted with a decree for refund of earnest money i.e. ₹1,00,000/- alongwith interest @ 10% per annum from the date of the agreement to sell i.e. 10.12.1997 till realization.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No