

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5773 of 2015 (O&M)
Date of Order:27.03.2019

Ravinder Kumar

..Appellant

Versus

Vidya Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhupinder Banga, Advocate
for the appellant.

Mr. Shvetanshu Goel, Advocate, for
Mr. Rishabh Gupta, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

In fact, while issuing notice, a Coordinate Bench had issued only a limited notice with respect to return of the earnest money with interest. The detailed order passed on 18.12.2015 is extracted as under:-

The plaintiff filed a suit for specific performance of an agreement dated 31.08.1998 executed by the father for himself and for his minor daughter promising to secure permission through court for sale of the minor's share. The father died in the year 2000 without securing any such permission. Notice was issued calling upon the daughter and the legal representatives to execute the sale deed. The legal representatives of the vendors' father and daughter

sought for copy of the agreement and though served did not favourably respond to execute the sale. The suit was filed within time but the suit was dismissed. The appellate court also dismissed it.

Without so much going even into the merits of the contentions of the defendant questioning the truth of the agreement, I asked the counsel as to how it will be competent for a court to enforce an agreement which involved a minor's interest in the property and when the father had not taken permission in the manner contemplated under the Hindu Minority and Guardianship Act for sale of minor's interest. The counsel responded that even if the minor's share could not be sold, the father's share ought to have been directed to be sold to the representatives. If the plaintiff were to confine the relief to a share of only one of the vendors or the representatives, then the enforcement of part only of the contract will be possible under Section 12 of the Specific Relief Act if the plaintiff declares that he is willing to pay the whole of the consideration and would secure the sale deed of what was competent to be sold. There had not been any attempt to seek for enforcement of part only of the contract before the courts below. According to the plaintiff, the father had right of 4 kanals of land, while the minor daughter at that time had 3 kanals 11 marlas. Section 12 (2) of the Specific Relief Act makes possible a specific enforcement of a part only of the contract if a part which is to be left unperformed constituted only a small proportion of the whole and would admit of compensation in money. I cannot say that the daughter's right in the property was only a small proportion in the manner

contemplated under the said provision. Sub section (3) of the said Section will operate where a portion that is left unperformed is a considerable part in which case the sub section itself declares that he will not be entitled to obtain a decree for specific performance but the court could in an appropriate situation direct specific performance of the part if the plaintiff declares that he was willing to relinquish all claims to performance for a part but still willing to pay whole consideration. This must have been done at the time of trial and cannot be examined now.

The order declining specific performance was perfectly competent but however the appeal would require to be examined for an alternative argument made by the counsel that the plaintiff must have been given benefit and the return of the sale consideration for damages and interest. The appeal will be considered on the following substantial question of law:-

Whether the courts below were in error in even denying to the plaintiff the amount admittedly received by the father-executant and damages and interest for the amount paid, even if the agreement could not be enforced in the manner contemplated under Section 12 of the Specific Relief Act?

Notice of motion for 31.03.2016.

Mr. Rishabh Gupta, Advocate, takes notice on behalf of respondent No.1.

Appellant shall serve copy of the paper book to the counsel appearing on behalf of respondent

No.1.”

In view of the aforesaid, learned counsel appearing for the respondent has very fairly stated that the amount of earnest money shall be refunded to the plaintiff-appellant along with interest @ 9% per annum from the date of agreement till payment within two months.

In view of what has been stated hereinabove, the regular second appeal is disposed of accordingly.

March 27, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No