

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

RSA No.2373 of 2018 (O&M)

Date of Decision:15.05.2019

Sony

.....Appellant

Versus

Ranjit Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Nimanyu Gautam, Advocate
for the appellant.

LISA GILL, J.

Appellant, arrayed as defendant no.1 before the learned trial Court has filed this appeal being aggrieved of judgement and decree dated 24.10.2017 passed by the learned Additional District Judge, Kapurthala, whereby judgement and decree dated 21.11.2014, passed by learned Additional Civil Judge (Sr. Division), Sultanpur Lodhi, dismissing the plaintiff's suit has been set aside. Suit filed by the plaintiff-respondent no.1 has been partly decreed, while affording the alternate relief of recovery of the earnest money and declining that of specific performance of the agreement to sell.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent no.1-Ranjit Singh filed a suit for possession by way of specific performance of the agreement to sell dated 23.07.2007 in respect to the land as described in the plaint. In the alternate, claim for recovery of ₹.2,00,000/- along with interest at the rate of 18% per annum was also set forth. It is pleaded that the present appellant-defendant no.1 and defendant no.2-Suresh Arora represented to the plaintiff that the land/plot in dispute was owned and possessed by defendant no.3-Chanan Singh. The present

appellant and defendant no.1 claimed to have purchased the plot from defendant no.3 and carved out a colony demarcating various plots therein. Sale deeds in respect to the plots, it was projected would be executed directly by defendant no.3-Chanan Singh at the instance of the present appellant and defendant no.2. An agreement to sell dated 23.07.2007, was statedly entered into by the plaintiff, the present appellant being specified as a seller therein, at the rate of ₹35,000/- per marla i.e., a total of ₹2,66,000/- for the suit property. ₹1,00,000/- was received by defendants no.1 and 2 from the plaintiff on the date of the agreement and sale deed was agreed to be executed on 01.11.2007. A week before the date fixed, plaintiff requested the present appellant and defendant no.2 to execute the sale deed on which they assured the plaintiff of the same. However, the present appellant and defendant no.2 failed to get the sale deed executed from defendant no.3 in favour of the plaintiff. The date was extended up to 31.03.2008 vide 'additional agreement to sell' dated 01.07.2007. Plaintiff pleaded that he remained present before the Sub-Registrar on 31.03.2008, but the defendants did not turn up. Despite request, needful was not done. Hence the suit was filed.

Defendant no.3 did not appear upon notice and he was proceeded against ex parte. Present appellant and defendant no.2 contested the suit while raising various preliminary objections. It is stated on merits that earlier, land measuring 39 Kanal 2 Marlas was purchased by one Darshan Singh from defendant no.3. Thereafter, Darshan Singh carved out the colony on the said land and agreed to sell the disputed plot measuring 12 Marlas to defendant no.1 vide agreement to sell dated 05.07.2007, but

defendant no.1 could not arrange the balance sale consideration. Therefore, he executed an agreement to sell dated 23.07.2007 in respect to the disputed plot in favour of the plaintiff. However, execution of sale deeds was thereafter banned as per directions of the government. Thus, agreement to sell dated 23.07.2007 could not be executed. Plaintiff demanded return of the earnest money, which was stated to be returned in presence of witnesses. Accordingly, agreement to sell dated 23.07.2007 was cancelled. Defendant no.2, it is stated was present as a witness at the time of cancellation of the agreement to sell. It is alleged that the plaintiff prepared a false, bogus and a fabricated agreement to sell dated 01.11.2007 in connivance with the witnesses and the deed writer. Agreement to sell dated 01.11.2007, it is pleaded was never executed in favour of the plaintiff. Dismissal of the suit was prayed for.

After filing of the written statement, the present appellant and defendant no.2 chose not to associate themselves with the proceedings and they were also proceeded against *ex parte*. Subsequently, on application, *ex parte* proceedings against the present appellant, were set aside vide order dated 06.04.2011.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the defendant no.1 entered into an agreement to sell dated 01.11.2007 in favour of plaintiff and received Rs.1,00,000/- as earnest money from the plaintiff?OPP
2. Whether the plaintiff is ready and willing to perform his part of the contract?OPP
3. If issues no.1 and 2 are proved, whether the plaintiff is entitled to specific performance of agreement to sell dated 01.11.2007?OPP
4. If issue no.3 is not proved, whether the plaintiff is entitled in the alternative relief to recover Rs.2,00,000?

OPP

5. Whether the plaintiff entitled to interest? If so, at what rate?OPP
6. Whether the suit is not maintainable?OPD.
7. Whether the plaintiff has got no locus- standi/cause of action to file the suit?OPD
8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
9. Whether the agreement to sell dated 01.11.2007 is wrong, bogus and fabricated agreement?OPD
10. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record, concluded that the plaintiff failed to prove his case on the basis of the evidence on record as the original agreement to sell was never placed on record. Suit was accordingly dismissed.

Appeal preferred by the plaintiff was however partly allowed by the learned Additional District Judge, Kapurthala vide impugned judgement and decree dated 24.10.2017. It is observed by the learned Additional District Judge, Kapurthala that once the appellant has himself admitted that the original agreement to sell was cancelled by both the parties and was torn, there is no question of non-suiting the plaintiff on the ground of the original agreement not being produced. However, it is held that the relief of specific performance of the agreement to sell could not be granted in favour of the plaintiff as the appellant and defendant no.2 were not even the owners of the land in question. As handing over of the earnest money of ₹1,00,000/- was proved on record, learned Additional District Judge, Kapurthala directed recovery of the said amount along with interest.

Aggrieved therefrom, present appeal has been filed by

appellant.

Learned counsel for the appellant vehemently argues that return of the earnest money is duly proved as is evident from the testimony of DW-2-Kamaljit Singh son of Mohinder Singh. Moreover, the original agreement to sell and the additional agreement were never produced by the plaintiff. Therefore, the alternate relief has been wrongly afforded by the learned First Appellate Court while reversing the well reasoned and logical judgement dated 21.11.2014, passed by the learned Additional Civil Judge (Sr. Division), Sultanpur Lodhi. It is thus prayed that the present appeal be allowed and the judgement and decree dated 24.10.2017 passed by the learned First Appellate Court, be set aside.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

It is a matter of record that defendant no.1 while deposing as DW-1 has admitted the execution of the agreement to sell dated 23.07.2007 in respect to land measuring 12 Marlas. DW-1 has also admitted the factum of receipt of ₹1,00,000/- from the plaintiff as earnest money. It is pertinent to note at this stage that the present appellant-DW-1, in his examination-in-chief contended that the agreement to sell dated 23.07.2007 and 01.11.2007 are forged and fabricated documents. However, in his cross-examination, DW-1 has admitted the agreement to sell and testified that the date of registration of the sale deed was extended while executing another agreement to sell dated 01.11.2007. The stand thereafter taken by DW-1 was that the oral agreement to sell was cancelled by both the parties and the same was torn of. In the facts and circumstances as above, learned

Appellate Court has rightly held that once defendant no.1 has admitted the execution of the agreement to sell, no adverse inference can be drawn against the plaintiff in view of the original agreement not being produced. The appellant has taken a stand that the earnest money was returned but learned counsel for the appellant is unable to deny that there is not an iota of evidence on record to prove the stand taken by the appellant that the amount of ₹1,00,000/- was returned by him to the plaintiff. Mere oral evidence of DW-2 in the absence of any other corroborating evidence has been rightly discarded.

It is further a matter of record that as per the revenue record, owner in possession of the land was defendant no.3-Chanan Singh and not the present appellant or defendant no.2. In the light of the facts as above, learned Additional District Judge, Kapurthala, has rightly directed recovery of the earnest money admittedly received from the plaintiff, with there being no proof of its return.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned decision dated 24.10.2017, passed by the learned Additional District Judge, Kapurthala.

Keeping in view the facts and circumstances of the case, there is no ground whatsoever to interfere in the impugned judgement and decree dated 24.10.2017, passed by the learned Additional District Judge, Kapurthala, and the same is upheld.

Present appeal is, consequently, dismissed with no order as to cost.

15.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.