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

RSA No. 2597 of 2018 (O&M)  
Date of Decision: 06.08.2019

Mohan Lal Verma and another

-Appellants

Vs

Dr. Rakesh Singla and another

-Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. L.S. Bhangu, Advocate,  
for the appellants.

Mr. Rakesh Gupta, Advocate,  
for respondent No.1.

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**RAJ MOHAN SINGH, J.**

1. Defendants are in Regular Second Appeal against judgment and decree dated 30.01.2018 passed by Additional District Judge, Patiala whereby judgment and decree dated 20.03.2017 passed by Civil Judge (Junior Division), Rajpura was set aside and the suit for recovery was decreed in a sum of Rs.6,30,000/- along with interest @ 9% per annum w.e.f. 03.01.2006 upto the date of institution of the suit and *pendente lite* as well as future interest @ 6% per annum.

2. Plaintiff-respondent No.1 filed a suit for recovery of Rs.6,30,000/- along with interest from 03.01.2006 till payment with costs of the suit on the ground that the defendants being

owners in possession of the suit land entered into an agreement to sell of total land measuring 4994.44 square yards as shown in the plaint for total sale consideration of Rs.1,26,10,961/- @ Rs.2525/- per square yards with the plaintiff and others.

3. On 03.01.2006, an earnest money to the tune of Rs.31,50,000/- was received by the defendants in which the plaintiff contributed a sum of Rs.6,30,000/- along with other prospective vendees. 06.11.2006 was the date fixed for execution and registration of sale deed. In the event of failure on the part of the defendants, the purchasers had the right to get the sale deed executed through the process of the Court by depositing remaining amount in the Court. In case of default on behalf of the purchasers, the agreement was to be treated as cancelled.

4. Plaintiff alleged that on the date fixed, he along with other purchasers visited the office of Sub Registrar along with balance sale consideration according to their shares and remained present in the office of Sub Registrar throughout but the defendants did not turn up. Plaintiff and others got their presence marked in the office of Sub Registrar, Rajpura. Plaintiff and other purchasers met the defendants and requested them to execute and register the sale deed but the defendants did not pay any heed. The purchasers went to the spot and inquired

about the land and then they came to know that the defendants were neither owners nor in possession of the land and they had played fraud with the plaintiff and other purchasers.

5. Defendants did not refund the amount in question.

6. Precisely with the aforesaid background, the suit came to be filed.

7. The suit was contested by the defendants on all counts.

8. Defendants pleaded that plaintiff has concealed material facts and has not come to the Court with clean hands. Pendency of Civil Suit No.217 dated 15.05.2007 was pleaded which was filed by the defendants against the plaintiff and other purchasers.

9. The suit was claimed to be bad for non-joinder of necessary parties. On merits, the agreement to sell dated 03.01.2006 was admitted, however defendants pleaded fault on behalf of the plaintiff in the context of non-performing his part despite receiving legal notice dated 19.03.2007 served by the defendants to which he did not reply.

10. Defendants further pleaded that the plaintiff did not turn up on the agreed date along with balance sale consideration and the defendants got their presence marked before the Sub Registrar and therefore, earnest money stood

forfeited as per condition of the agreement to sell and the agreement stood cancelled and the plaintiff was not entitled for any relief. Defendants again gave opportunity to the plaintiff to come present on 26.03.2007 along with balance sale consideration and other expenses for execution and registration of sale deed but the plaintiff was not having requisite money on 26.03.2007 and did not perform his part of contract.

11. Plaintiff did not file replication and parties went to trial on following issues:-

- “1. Whether the plaintiff is entitled for recovery along with interest as prayed for? OPP*
- 2. Whether the suit of plaintiff is not legally maintainable? OPD*
- 3. Whether plaintiff has concealed the true and material facts from the court and has not come to the court with clean hands? OPD*
- 4. Whether the suit is bad for non joinder of parties? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether plaintiff has not affixed the proper court fee as such suit is liable to be rejected under order 7 rule 11 CPC? OPD*

7. *Relief.”*

12. Plaintiff examined himself as PW1 and tendered agreement to sell dated 06.11.2006 as Ex.P1, affidavit dated 06.11.2006 as Ex.P2 and thereafter, closed the evidence.

13. Defendants examined Head Constable Harvinder Singh as DW1, Ishar Singh as DW2, Parveen Kumar as DW3, Mohan Lal defendant as DW4 and Rajinder Kumar as DW5. Thereafter, defendants closed their evidence.

14. The trial Court dismissed the suit vide judgment and decree dated 20.03.2017 on the premise that the agreement to sell was executed for the share of land measuring 216 Kanals but it was not specifically mentioned about actual share sold by the defendants to each of the purchasers out of the aforesaid 216 Kanals.

15. Agreement Ex.P1 contained blank space for share. The aforesaid vagueness in the agreement to sell was perceived to be a flaw in the document to arrive at a conclusion that no specific amount was handed over by the plaintiff to the defendants. Plaintiff has not examined any witness to prove that how much amount was paid by him to the defendants vis-a-vis other purchasers. Other purchasers have not been impleaded as party, therefore, the plaintiff could not prove his case.

16. The lower Appellate Court vide judgment and decree

dated 30.01.2018 reversed the decision of the trial Court by observing that the defendants have specifically admitted that all the vendees including the plaintiff had jointly entered into agreement to sell on 03.01.2006 for a total sale consideration of Rs.1,26,10,961/- and earnest money to the tune of Rs.31,50,000/- was paid. The execution of agreement to sell was admitted which was executed by the defendants with the plaintiff and other co-vendors jointly. Payment of earnest money to the tune of Rs.31,50,000/- made by the plaintiff and others to the defendants was also an admitted fact. Defendants have not disputed the correctness of amount received by them but only raised the contentions that the terms of the agreement are uncertain. The agreement to sell and part payment were accepted by the defendants without any protest and they acted upon the agreement. Defendants never raised objection with regard to vagueness and uncertainties in the agreement.

17. The lower Appellate Court accepted the appeal vide judgment and decree dated 30.01.2018 and decreed the suit in appeal at appellate stage in a sum of Rs.6,30,000/- along with interest @ 9% per annum w.e.f. 03.01.2006 upto the date of institution of the suit and *pendente lite* as well as future interest @ 6% per annum.

18. Perusal of the plaint would show that the plaintiff has

pleaded basic features of the agreement to sell in para no.1 with reference to total sale consideration, earnest money to the tune of Rs.31,50,000/- and contribution made by the plaintiff to the tune of Rs.6,30,000/- along with other purchasers.

19. In the written statement filed by the defendants, the contribution made by the plaintiff to the tune of Rs.6,30,000/- was not denied nor the factum of earnest money to the tune of Rs.31,50,000/- was denied. Agreement to sell was admitted. In para no.12 of the written statement, factum of pendency of Civil Suit No.217 dated 15.05.2007 titled 'Mohan Lal Verma vs Sunita Rani and others' was pleaded. In the written statement filed by defendant No.2 separately, factum of earnest money and contribution made by the plaintiff was not denied.

20. While appearing as PW1, plaintiff has specifically pleaded agreement to sell with reference to payment of earnest money in which plaintiff had contributed a sum of Rs.6,30,000/- along with other purchasers. Plaintiff-PW1 was cross-examined by the defendants. Plaintiff was not cross-examined and no suggestion was given that he did not contribute to the extent of Rs.6,30,000/- in the total earnest money paid to the defendants. Plaintiff volunteered that the amount was contributed by all the five and share was to be purchased in equal share.

21. In the testimony of DW2, factum of earlier agreement

to sell dated 31.12.2005 came to fore whereby DW2 submitted that Gurbax Singh, Bagicha Singh, Karnail Singh sons of Banta Singh, Santokh Singh son of Iqbal Singh son of Banta Singh, Mohar Singh, Suba Singh, Sucha Singh sons of Gurbax Singh and Major Singh, Gurdeep Singh sons of Bagicha Singh co-vendors entered into agreement to sell dated 31.12.2005 with Mohan Lal Verma, Hem Lata and Manjeet Singh @ Rs.70 lacs per acre and had received Rs.2 crores as earnest money. DW2 was marginal witness to the said agreement to sell. The agreement to sell was brought on record as mark DA and the witness identified his signature on the said agreement to sell.

22. An application for leading secondary evidence in the context of agreement to sell dated 31.12.2005 was dismissed by the trial Court. Factum of agreement to sell dated 31.12.2005 could not be established by the defendants as their prayer for leading secondary evidence was dismissed and the said order was never assailed.

23. The testimony of DW3 was also to the said effect. This witness had also stated that agreement to sell dated 31.12.2005 was executed between Gurbax Singh and others and the defendants and the date for execution and registration of sale deed was fixed as 31.12.2006. The witness stated in respect of affidavit dated 23.02.2007 executed by the parties in

his presence.

24. Mohan Lal Verma-DW4 in affidavit Ex.DW4/A has not stated anything qua paying the amount back to the plaintiff in earlier suit. No evidence was brought on record in respect of earlier Civil Suit No.217 dated 15.05.2007 which was statedly pending at the relevant time.

25. During course of arguments, learned counsel for the appellants admitted that the said suit was dismissed.

26. Perusal of the record would show that in the light of statements made by DW2 and DW3, defendants were not the owners of the suit land, rather they had entered into agreement to sell with Gurbax Singh and others and on account of that contingency further entered into agreement to sell with the plaintiff and others. Earlier agreement to sell mark DA could not be proved on record and the application for leading secondary evidence to that effect was dismissed.

27. In the absence of such contingent agreement, no title in favour of the defendants could be presumed on the date of entering into agreement to sell with plaintiff and other purchasers.

28. Only argument rested with the defendants-appellants was that in view of pending Civil Suit No.217 dated 15.05.2007, factum of return of entire money to the plaintiff and others has to

be believed. Particulars of Civil Suit No.217 dated 15.05.2007 with reference to pleadings and evidence could not be brought on record by the defendants despite relying upon the said suit in para no.12 of the written statement.

29. Even if the plaintiff has not filed any replication to the written statement, but the pleadings made by the defendants in para no.12 of the written statement were required to be proved by the defendants themselves. No evidence was led by the defendants in the context of result of Civil Suit No.217 dated 15.05.2007 titled 'Mohan Lal Verma vs Sunita Rani and others'. Payment of proportionate amount of earnest money to the tune of Rs.6,30,000/- was specifically pleaded by the plaintiff in para no.1 of the plaint and the said fact has not been denied by the defendants in the written statement nor in the statement while appearing as DW4. The return of the amount in previous litigation was also not pleaded with reference to the particulars viz date, time and place of payment nor any ingredients of forfeiture of the amount could be brought on record.

30. The pleadings made by the plaintiff in the plaint have gone unrebutted in the context of contribution made by the plaintiff to the tune of Rs.6,30,000/-. Since agreement to sell and payment of earnest money were admitted facts on record, therefore, by not controverting the contribution of Rs.6,30,000/-

made by the plaintiff, the defendants have also admitted the contribution made by the plaintiff in the total sum of Rs.31,50,000/- and his share came out to be Rs.6,30,000/-.

31. Even in the statement of DW4, no such facts have come to fore that the defendants have earlier paid the amount back to the plaintiff and others in earlier litigation.

32. A joint transfer of money for consideration has to be presumed that they have equal interest in the property. Section 45 of the Transfer of Property Act mandates the aforesaid joint transfer for consideration. Once the agreement to sell and passing of earnest money were admitted by the defendants, the onus shifted upon the defendants to prove that the earnest money was refunded to the plaintiff and other purchasers in the earlier litigation. Particulars of earlier litigation could not be brought on record. Even the defendants were not the owners. Factum of earlier agreement executed between Gurbax Singh and others with defendants could not be brought on record despite filing an application for additional evidence.

33. In view of aforesaid, it has been taken that the defendants entered into an agreement to sell with the plaintiff and other purchasers without any lawful title with them. Factum of receiving earnest money to the tune of Rs.31,50,000/- is an admitted fact. Defendants could not prove the return of the

amount for want of evidence.

34. Once the agreement was admitted being jointly executed by the plaintiff and other purchasers, vagueness in condition (if any) would not be of any consequence as the intention of the parties is to be seen. Solvent act of the parties cannot be ignored.

35. It is a settled principle of law that once agreement to sell is proved, normal consequences are to honour the same for decreeing the suit for specific performance.

36. In the instant case, title to the property was not available in favour of the defendants, therefore, it was solvent duty of the defendants to return the amount. The earnest money was jointly paid by all the prospective vendees in equal shares. The return of the said amount to the plaintiff and other vendees could not be proved by the defendants. Even if the other purchasers have not been impleaded in the suit, that would not be a factor to dis-lodge the plaintiff for seeking his share of 1/5<sup>th</sup> in total earnest money of Rs.31,50,000/-.

37. Entitlement of the plaintiff on the strength of Section 45 of the Transfer of Property Act can be appreciated. Plaintiff was having equal interest in the property. Since the payment of earnest money was made a joint venture by all the purchasers, therefore, the share of the plaintiff would come out to be 1/5<sup>th</sup>

i.e. Rs.6,30,000/- as claimed by the plaintiff in the suit.

38. Since the defendants could not lead any evidence in respect of return of the amount to the purchasers, therefore, they are bound to answer the claim of the plaintiff.

39. Reference can be made to **Hemant s/o Ramchandra Ingole and others, Naresh s/o Trimbakrao Ingole, 2018(3) AIR Bom. R 538.**

40. The proposition with regard to proving his case by the plaintiff on his own legs cannot be attracted in the present case as the plaintiff has successfully pleaded factum of agreement to sell, payment of earnest money and his contribution to the tune of Rs.6,30,000/- in the plaint.

41. The averments in the plaint have not been denied by the defendants in the written statement as well as while appearing as DW4. Even the defendants were not proved to be owners of the land for which they entered into agreement with the plaintiff and others.

42. Execution of agreement and payment of earnest money were proved as the same were admitted by the defendants.

43. In view of above, only irresistible conclusion is that the plaintiff is entitled to his share of contribution as the defendants could not prove payment of the amount back to the

purchasers in the earlier litigation.

44. Particulars of earlier litigation with reference to any decision on merits could not be proved by the defendants on record nor any evidence was led. Even the pleadings to that effect in the written statement are vague as no particulars of the earlier suit were pleaded with reference to any evidence or decision thereof.

45. For the reasons recorded hereinabove, I find that no substantial question of law worth cognizance of this Court is involved. The findings of fact recorded by the lower Appellate Court are reasoned and based on correct interpretation of law.

46. No interference in this Regular Second Appeal is called for.

47. This appeal is found to be totally devoid of merits and the same is accordingly, dismissed.

06.08.2019  
*Jyoti Yadav*

**(RAJ MOHAN SINGH)**  
**JUDGE**

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