

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3628 of 2017 (O&M)

Date of Decision: February 05, 2019

Harbhajan Dass

...Appellant

Versus

Gurbaxi Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-plaintiff has not been successful in seeing discretionary relief under Section 20 of the Specific Relief Act (for short, the Act) as the decree in the suit was confined to refund of earnest money of ₹1,75,000/- along with interest @ 9% per annum from the date of payment of the amount till the decision of the suit.

Plaintiff sought specific performance of the agreement to sell dated 15.10.1993 and on the same day, the defendants allegedly executed a power of attorney in his favour and paid ₹ 60,000/- as earnest money. The agreement contained the stipulation that the sale deed would be executed only when the mutation was effected in favour of defendant No.1. It was also stipulated that neither he nor his attorney would make any statement adverse to each other. However, during this period, Tehsildar as well as Chief Sales Commissioner took the suo-motu cognizance with regard to the mutation and in those proceedings, land measuring 4 kanals each came to

the share of both the defendants. The aforementioned order was challenged by the vendor of the plaintiff in revision, which was dismissed. Plaintiff is stated to have also challenged the order, but the writ petition was ordered to be withdrawn as defendant No.1 had cancelled the power of attorney executed in his favour. It is in these circumstances, the courts below did not grant the discretionary relief and confined it to alternative relief.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the parties, who were co-owners of land measuring 4 kanals each, were impleaded as defendants. Defendant No.1 did not have any authority to suffer a statement before the Financial Commissioner for surrendering or relinquishing his right in the title of land in favour of defendant No.2. It was a willful attempt to circumvent the conditions stipulated in the agreement to sell and thwart the claim of the plaintiff. The courts below failed to notice the aforementioned facts and, therefore, there is an abdication.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there was no contract/agreement between the plaintiff and defendant No.2. Vendor and vendee could not envision the occurrence of situation regarding suo-motu cognizance taken by the Tehsildar and defendant No.1 was deprived of the ownership of the land, even if he had undertaken to adjust the amount, in view of the statement suffered by defendant No.1 in favour of defendant No.2. Defendant No.1 did not have any saleable right. In such circumstances, the courts below could not exercise the discretion under Section 20 of the Act calling upon defendant No.2 being not signatory of the agreement to sell to execute the sale deed.

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For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No