

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

(1) RSA No.3707 of 2017 (O&M)

Jaswant Singh Chauhan

...Appellant(s)

Versus

Satish Kumar and another

...Respondent(s)

(2) RSA No.3709 of 2017 (O&M)

Jaswant Singh Chauhan

...Appellant(s)

Versus

Satish Kumar and another

...Respondent(s)

Date of Decision:22.01.2019

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Parveen Hans, Advocate for the appellant.
Mr.Jagdish Manchanda, Advocate for respondent No.1
in both the appeals.

ANIL KSHETARPAL, J. (ORAL)

This judgment shall stand disposed of two appeals bearing RSA Nos. 3707 and 3709 of 2017 as both these arise out of a common judgment.

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while decreeing the suit for possession by way of specific performance of the agreement to sell dated 28.01.2004.

Appellant Jaswant Singh was allotted a plot No.934, Sector-23, Bhiwani measuring 14 marlas which he agreed to sell in favour of the plaintiff vide agreement to sell dated 28.01.2004. Although, the allotment had been made in his favour but the allotment letter was not issued. He had only deposited a sum of Rs.39,349/- with Haryana Urban Development Authority. It was agreed that the entire plot is being sold at Rs.1,25,000/- including a sum of Rs.39,349/- deposited by the defendant-appellant with Haryana Urban Development Authority. The defendant received the entire consideration and gave an undertaking that he has no right, title or interest in the property and it shall be the purchaser who would be dealing with Haryana Urban Development Authority as also contesting litigant.

A complaint was filed before the Consumer Court, which was allowed on 09.02.2007, directing the Haryana Urban Development Authority to issue allotment letter. Since the defendant-appellant did not come forward to honour the agreement, therefore, present suit was filed. The defendant took a stand that the agreement to sell is forged, fabricated and fake and blank papers were got signed by misrepresentation.

Both the courts on appreciation of evidence have found that the agreement to sell was executed voluntarily and it is the plaintiff who has paid subsequent instalments and contested the litigation before the Consumer Forum.

The learned trial court passed a decree for specific performance, however, the learned first appellate court, after noticing that the plot can be transferred in the name of plaintiff by Haryana Urban

Development Authority itself, therefore, directed the Haryana Urban Development Authority to transfer the plot.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that the agreement to sell is fake as it does not specify the conditions who would make the payment of the remaining balance price. He has further submitted, while referring to Ex.P25-statement of an account from the bank, that payment of Rs.98,657/- and Rs.50,150/- has been paid by the defendant-appellant.

This Court has considered the submissions.

The defendant-appellant had already received a sum of Rs.39,349/- which was deposited by him along with premium of Rs.85,651/- (Total Rs.1,25,000/-). Obviously the balance sale consideration was payable by the purchaser-plaintiff. The agreement to sell is in writing and the defendant-appellant has signed both the pages of the agreement to sell. Still further, on page 2, the defendant-appellant has also signed receipt of Rs.1,25,000/-. Therefore, the agreement to sell cannot be said to be fake.

As regards next argument, it may be noted that the aforesaid statement of account is with respect to bank account of Surender, Ramesh Kumari and Jaswant Singh jointly. No explanation has come as to why the payment was paid from the account which was maintained with strangers. Further, apart from agreement to sell, the defendant also signed indemnity bond, affidavit and application for transfer of the plaint. Further, the

plaintiff has not produced the evidence that the entire payment was made by the plaintiff after the agreement to sell was entered into.

Learned counsel for the appellant, as a matter of last resort, has submitted that the plaintiff had filed an application for amending the prayer made in the suit to the effect that direction be issued to Haryana Urban Development Authority to transfer the plot in his favour which was dismissed and a revision petition was also dismissed. He submits that once an order has become final, the court could not have issued direction to the Haryana Urban Development Authority.

This Court has considered the submissions. The trial court had only declined the prayer for amendment of the plaint. The relief as such cannot be said to have been declined. It is permissible for the court to mould the relief so as to do substantive justice between the parties. Once the sale-deed is not to be executed and registered, only transfer is to be made through Haryana Urban Development Authority, therefore, the first appellate court has rightly modified the relief and issued appropriate direction to the Haryana Urban Development Authority.

Learned counsel for the appellant has further submitted that it is the appellant who had contested the litigation before District Consumer Forum, State Consumer Commission as well as National Consumer Commission but the plaintiff did not contribute. Learned counsel was called upon to point out the evidence which may prove that the defendant-appellant had requested the plaintiff to pay the amount or he had ever made a grievance that the plaintiff has failed to pay the amount. Since counsel could not draw attention of the Court to such evidence, therefore the courts

have rightly recorded the finding.

In view of the aforesaid, this Court does not find that the findings of the courts below are erroneous. Both the aforementioned appeals are dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.01.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No