

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

RSA No.3564 of 2018(O&M)

Date of decision: 15.11.2019

Rati Ram

... Appellant

Versus

Satbir @ Sarjeet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vishwajeet Singh, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 23.09.2015, and as even the appeal preferred against the said decree failed and was dismissed on 22.02.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff filed a suit for recovery of Rs.3,00,000/- along with interest. In brief, the case set out by him was that defendant happened to be the owner in possession of a plot measuring 26'x31' total 90 sq. yards, comprised in specific khasra numbers, situated in New Extension Colony, Palwal. The defendant assured plaintiff that said site was free from all encumbrances and accordingly an agreement to sell dated 28.11.2007 was entered into between the parties for a total sale consideration of Rs.9,00,000/-. Rs.2,00,000/- were paid by the plaintiff to the defendant as earnest money in cash against a separate receipt dated 28.11.2007. The date fixed for execution of the sale deed was 27.02.2008. It was agreed that a further sum of Rs.1,00,000/- shall be paid by the plaintiff on or before

15.12.2007. Whereas, balance amount of Rs.6,00,000/- was to be paid at the time of execution of the sale deed. Soon after the execution of the agreement, plaintiff visited the spot and found that suit property was in possession of a third party. Though the defendant assured the plaintiff that he would obtain and deliver actual physical possession of the suit property to the plaintiff, but to no avail. Accordingly, the plaintiff required defendant to either have the suit property vacated and deliver possession or refund Rs.3,00,000/- received pursuant to the agreement. Thus, the suit.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that plaintiff himself approached the defendant to purchase the suit land and it was duly brought to his notice that the same was free from all encumbrances. Further, the defendant has always been ready and willing to perform his part of the contract, for, there was no legal impediment to transfer the suit property in favour of the plaintiff. In fact, plaintiff did not have sufficient funds to execute the sale deed. In fact, for the defendant forfeited the amount received from the plaintiff, thus, he has filed the present suit. And if the plaintiff was still ready and willing to purchase the suit land, he could be delivered and put in possession as agreed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that execution of the agreement to sell dated 28.11.2007 (Ex.P1), receipt (Ex.P2) dated 28.11.2007 of Rs.2,00,000/- and another receipt (Ex.P3) dated 14.12.2007 for Rs.1,00,000/- was not disputed. The short issue that required determination was if the defendant had marketable title and was in possession of the suit property. The burden of proof was upon the plaintiff, however, analysis of the sale deed dated 08.01.2007 (Ex.D1) clearly shows

that suit property was purchased by Satbir from Harnam Singh. Ownership of Satbir over the suit land was also corroborated from mutation No.11211 (Ex.D2). Thus, it could not be disputed that defendant was the owner of the suit land and held a valid title thereto. The plea set out by the plaintiff was that defendant was never in possession and it was some other person, who was in occupation thereof, hence, execution of the agreement was not feasible. To substantiate his plea reliance was placed upon an affidavit (Mark A), vide which defendant had bound himself to deliver vacant possession of the suit property, and also a complaint dated 01.12.2007 (Mark D) made to the S.P. by the defendant to get the suit land vacated. However, plaintiff failed to prove if those documents bear signatures of the defendant. No expert was examined either to prove that document (Mark D) was written and signed by the defendant. Not just that, plaintiff even failed to present himself for cross-examination and, therefore, adverse inference was drawn against him. In the given situation, if the plaintiff was ready and willing to perform his part of the contract, he ought to have prayed for a decree for specific performance and in case execution of the agreement was not possible he could ask for rescission of contract. However, he filed the present suit for declaration that agreement dated 28.11.2007 was illegal and void. Apparently, one of the conditions of the agreement to sell (Ex.P1) envisaged that in the event, the remaining consideration was not paid by the date fixed for execution of the sale deed, the earnest money shall stand forfeited and the agreement would be deemed to have been cancelled. For the plaintiff did not possess or paid the balance sale consideration, the defendant had every right to forfeit the earnest money.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

15.11.2019
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO