

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6229 of 2017 (O&M)

Date of Decision: March 18, 2019

Narinder Singh & another

...Appellants

Versus

Jarnail Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ramneek Vasudeva, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the judgments and decrees of the courts below, whereby in a suit for specific performance of the agreement to sell dated 12.07.2007, relief of recovery of ₹13,00,000/- along with interest @ 12% per annum till the date of judgment and future interest @ 6% per annum from the date of judgment till actual realization, has been ordered.

Plaintiff sought the specific performance of the agreement to sell in respect of the suit land on the premise that the appellant-defendants had agreed to sell the land @ ₹ 5,50,000/- per acre against payment of ₹10,00,000/- as earnest money, out of which ₹ 6,00,000/- was paid vide cheque dated 12.07.2017 and another sum of ₹ 4,00,000/- in cash and subsequently on 31.07.2007, another sum of ₹ 3,00,000/-, i.e., ₹ 2,00,000/- by cheque dated 01.08.2007 and ₹ 1,00,000/- in cash was paid. In all, the defendants received a sum of ₹ 13,00,000/-. The suit land was hilly area and, therefore, as per the terms and conditions of the agreement, the

defendants had to obtain the permission from the department for levelling the land within a period of three months and demarcate the land by affixing burjies, but refused to accede to the request, thus, constrained to file the suit.

Defendants admitted the execution of the agreement to sell and the amount, referred to therein, but stated that the suit was not maintainable as the plaintiff had filed a suit for injunction on 17.01.2008 on the basis of the cause of action accrued on 13.01.2008. During the pendency of the suit, when the demarcation was requested, the suit was dismissed on 23.09.2009 and the present suit was filed on 25.09.2009 on the basis of the alleged agreement to sell dated 12.07.2007.

The trial Court decreed the suit by giving finding on readiness and willingness against the plaintiff but Lower Appellate Court reversed the finding qua readiness and willingness and granted the relief of return of earnest money.

Mr. Ramneek Vasudeva, learned counsel for the appellant-defendants submitted that no doubt, the appellant-defendants had sold the property to third party in the same very year, i.e., 2009, but the suit for specific performance after dismissal of the suit for injunction, as noticed above, was not maintainable. Once the Lower Appellate Court reversed the finding qua readiness and willingness, the amount of earnest money was deemed to have been forfeited. The defendants performed the part of the agreement to sell by obtaining the demarcation in accordance with the High Court Rules and Orders and instructions of the Financial Commissioner and in such circumstances, the plaintiff could not have been benefited from the relief.

I am afraid, the aforementioned arguments are not sustainable for the simple reason that the defendants had parted with the aforementioned suit land by way of two sale deeds Ex.P4 and Ex.P5. Once the agreement to sell was admitted and there was no saleable right, the trial Court rightly granted the alternative relief containing the element of interest.

For the reasons mentioned above, I do not find any illegality or perversity in the judgment and decree of the Lower Appellate Court. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No