IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.9774 of 2018 (O&M)
Date of Decision: September 18, 2019

Navtej Singh Sanghera and another

...Appellants

Versus

Sukhbir Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Balbir Singh Jaswal, Advocate
for the appellants.

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JAISHREE THAKUR, J. (Oral)

1. This is a regular second appeal that has been filed by appellants-defendants No.1 and 2 (henceforth called 'the appellants') against the judgment and decree dated 26.07.2018 passed by the first Appellate Court whereby, the appeal filed by the appellants against the judgment and decree dated 23.10.2017 passed by the lower court, decreeing the suit of the respondent-plaintiff (henceforth called 'the respondent'), has been dismissed.

2. In nutshell, the facts are that respondent-Sukhbir Singh filed a suit for recovery of ₹ 2,50,000/- along with statutory interest w.e.f. 18.12.2012 against the appellants namely Navtej Singh Sanghera and Major Singh, besides Gurmit Singh and Tanjit Kaur i.e. defendants No.3 and 4 (suit has been decreed only qua appellants-defendants No.1 and 2) alleging

therein that appellants had entered into an agreement to sell dated 18.12.2012 with the respondent with regard to commercial plot No.34 measuring 27.77 sq. yards having length 25 ft. and breadth 10 ft. out of khasra No.61//18/2/3, 19/3, 61//18/2/14, 61//19/4 situated at village Nangli, Loharka Road, Tehsil and District Amritsar, which they had purchased from Gurmit Singh and Tanjit Kaur (defendants No.3 and 4), for a sale consideration of ₹ 8,15,000/- and received ₹ 2,50,000/- as earnest money. It was agreed that the appellants shall execute the sale deed on 20.05.2013, after confirming their title, in favour of the respondent or any other person he likes. It was alleged that on the date of execution of the sale deed, the respondent remained present in the office of Sub-Registrar, Amritsar for registration of the sale deed along with balance sale consideration, but the appellants did not turn up to execute the sale deed in his favour. It was averred that presence of the respondent was duly marked before the office of Sub Registrar/Executive Officer by way of executing self attested declaration. Thereafter, the respondent contacted the appellants and requested them to execute the sale deed, but they showed their inability because as on date, defendants No.3 and 4 had not executed a sale deed in their favour. It was submitted that the appellants told the respondent that the original owners i.e. defendants No.3 and 4 had not got the area authorized from the Municipal Corporation, as such, they would execute the sale deed shortly. It was alleged that thereafter, the appellants failed to get the sale deed executed in their favour from defendants No.3 and 4 and also did not get the plot in question regularized from the competent authority, as such, specific performance of the contract was not possible. It was submitted that the respondent demanded the amount of earnest money back from the appellants, but they delayed the matter on one pretext or the other and after few days, they flatly refused to return the amount, which forced the respondent to file a suit for recovery of the earnest money.

3. Upon notice, appellant No.1 did not turn up despite service, whereas, appellant No.2 appeared and contested the suit by taking preliminary objections. On merits, it was admitted that the appellants entered into an agreement to sell with the respondent with regard to the plot in question. It was submitted that the appellants had entered into an agreement to purchase the plot in question from defendants No.3 and 4, however, there was no sale in their favour, so could not complete the agreement with the respondent. It was averred that defendants No.3 and 4 were willing to execute the sale deed qua plot No.37.

4. Upon notice, defendants No.3 and 4 appeared and filed their separate written statement by taking the preliminary objections and on merits, it was admitted that the appellants had entered into an agreement to sell with the respondent with regard to plot No.29. It was submitted that defendants No.3 and 4 had other plots bearing no.37 and 38 and if the respondent is ready to purchase them, they will execute the sale deed as per the terms and conditions of the agreement to sell dated 18.12.2012 along with interest. It was alleged that there was no requirement at the time of executing the agreement to sell or at present for getting the plot regularized from the Municipal Corporation.

5. Replication was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After appreciating

the evidence, the lower court decreed the suit of the respondent along with interest against the appellants herein, while dismissing the suit qua defendants No.3 and 4. Aggrieved, the appellants filed an appeal before the first Appellate Court, which too came to be dismissed. Now, both the judgments and decrees of the courts below have been assailed in this regular second appeal.

6. Learned counsel appearing on behalf of the appellants argues that the respondent was not ready and willing to perform his part of the contract, as he had no money to purchase the plot. It was contended that there was no dispute regarding title of the plot and there was no requirement to get the plot regularized from the Municipal Corporation, at the time of execution of the sale deed. It was argued that the respondent ought to have filed a suit for specific performance of the agreement to sell and in that suit, it was for the court to decide whether the intended vendors had got valid title or not and whether the intended vendee was ready and willing to perform his part of the contract or not, but the courts below have not considered this aspect.

7. I have heard learned counsel for the appellants and have gone through the case file.

8. The lower court, while decreeing the suit of the respondent, has observed that the appellants were not having ownership right of the plot in question, therefore, they could not have transferred the same to the respondent, so instead of filing a suit for specific performance, the respondent chose to file a suit for recovery, which is maintainable. The findings of the lower court were affirmed in appeal by the first Appellate

Court.

9. In the present case, execution of agreement to sell by the appellants in favour of the respondent is not disputed. It is also not disputed that originally the plot in question was owned by defendants No.3 and 4 and the appellants herein had entered into an agreement to purchase the same with defendants No.3 and 4, on the basis of which the appellants had executed the agreement to sell in question in favour of the respondent. The plot in question formed part of the land owned by defendants No.3 and 4 and they executed a power of attorney dated 11.11.2010 in favour of the appellants. The plot in question was meant to be sold for commercial purposes and for carving out a smaller plot out of the total piece of land, therefore, permission of the competent authority was required. Under these circumstances, the respondent would be justified in getting the sale deed executed in his favour only after the requisite sanction from the authorities concerned had been obtained in this regard by the appellants and they had ownership of the same. The evidence led by the parties made it clear that the appellants had themselves not become owner of the plot in question and they were only having an agreement to sell in their favour, meaning thereby, they were not competent to transfer the plot in question in favour of the respondent. In their written statement filed, defendants No.3 and 4 had stated that since the respondent did not purchase the plot, they had sold the same to someone else. In such an eventuality, when the plot in question had already been sold by defendants No.3 and 4 to some one else, the suit filed by the respondent for recovery of earnest money, instead of specific performance of the agreement to sell, was maintainable. There is sufficient

evidence available on the record that on the date of execution of the sale deed, the respondent was present before the office of Sub Registrar along with the balance sale consideration, which he was having in his accounts maintained with Oriental Bank of Commerce and Punjab National Bank. There is no evidence available on record, which suggests that the respondent had not approached the court with clean hands or he had concealed the material facts from the court. During the course of arguments, counsel for the appellants miserably failed to point out anything wrong in the findings recorded by the courts below.

10. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by appellants-defendants No.1 and 2, which has no merit.

11. Dismissed.

(JAISHREE THAKUR)
JUDGE

September 18, 2019
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No