IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1921 of 2019 (O&M)
DATE OF DECISION : 29th JANUARY, 2020

Samgoli Landless Schedule Caste Cooperative Farming Society Limited, Village Samgoli, Tehsil Dera Bassi, District SAS Nagar (Mohali) through its representative

…. **Appellant**

Versus

Subhash Singh & another

…. **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Prateek Sodhi, Advocate for the appellant.

Mr. Parminder Singh, Advocate
for the caveator-respondents.

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RAJBIR SEHRAWAT, J. (Oral)

1. This regular second appeal is filed by the unsuccessful plaintiff, challenging the concurrent judgments and decrees passed by the court below, whereby the suit filed by the plaintiff, seeking specific performance of the alleged agreement, has been dismissed.

2. For the convenience, the parties are being referred to herein as plaintiff and the defendant; as they were described in the original suit.

3. Shorn of unnecessary details, the facts of the case, as mentioned in the lower appellate court, are that the plaintiff filed suit for specific performance of the agreement dated 29.06.1999, allegedly executed by the defendants in favour of the plaintiff, in which there was mention of readiness to sale of 20 bighas 13 biswas land, being half share

of the land measuring 41 bighas 6 biswas, situated within the revenue estate of village Samgauli, Tehsil Rajpura (now Tehsil Dera Bassi), for a sale consideration of ₹14,45,500/-. Since the sale deed was not executed, therefore, the suit was necessitated. So far as the terms of the alleged writing are concerned, it is mentioned in the said alleged settlement that this understanding between the plaintiff and the defendants was arrived at during meeting of a Panchayat, in which ₹5,000/- were paid to the father of the defendants on the date of execution of the alleged settlement. The earnest money was to be paid to the defendants on 06.07.1999. Thereafter, the sale deed was to be executed by defendants on 30.12.1999. But before that even the earnest money was also to be paid in the presence of the sub-Registrar. On the given date, the plaintiff appeared before the sub-Registrar for making payment of the earnest money. However, the defendants did not appear to take the earnest money. Hence, the suit was filed.

4. The respective parties led their evidence. After considering the evidence, the trial court dismissed the suit by holding that the alleged writing is not even the agreement to sell. Therefore, the same cannot be enforced. The trial court also held that since the said writing was in the nature of settlement, therefore, the said writing was required to be on a stamp paper of minimum denomination. However, since the same is not on any stamp paper, therefore, the same cannot be relied upon before the court. Accordingly, the suit filed by the plaintiff was dismissed. Aggrieved against the said judgment and decree, the plaintiff/appellant approached the lower appellate court. However, the lower appellate

court also dismissed the appeal filed by the plaintiff/appellant. Accordingly, the present appeal has been preferred.

5. Arguing the case, learned counsel for the appellant/plaintiff has submitted that the courts below have gone wrong in law in not treating the settlement as agreement to sell capable of being specifically performed. It is further submitted that the document did not require to be on any stamp paper, as such.

6. On the other hand, counsel for the defendants/respondents has submitted that there was no agreement to sell. The alleged document, being relied upon by the plaintiff/appellant, was at the best; an agreement to enter into an agreement in future by accepting in future the earnest money before sub-Registrar. Since it was optional for the defendants whether to enter into agreement or not, therefore, if the defendants had not reached the office of the sub-Registrar on the date mentioned in the writing for acceptance of the earnest money, no fault can be found, nor can the said writing be taken as an agreement to sell, as such. It is further contended by the counsel for the defendants/respondents that the consistent case of the defendants has been that even they have never agreed to the terms mentioned in the said writing. Instead; their case has been that the plaintiff was to pay an amount of ₹5,000/- to their father. That amount was paid by the plaintiff to their father; and accordingly on that count the signatures of the defendants were obtained on the said writing subsequently. Otherwise they were not even present in the said Panchayat. Still further it is submitted by the counsel for the defendants that even the amount of ₹5,000/- is not stated to have been paid to the defendants; as such. The said amount is stated to have been paid to their

father. However, the father is not even a defendant in the suit; nor has he been examined as witness, even to prove that the said amount was received by him even as a token money for agreeing to enter into an agreement to sell in future. Accordingly, the courts below have not committed any irregularity in holding that the alleged settlement is not an enforceable document. Therefore, the present appeal deserves to be dismissed.

7. Having considered the argument of the counsel for the parties, this court finds that the document being relied upon by the plaintiff, is not an agreement to sell, as such. Even if the same is taken as correct, then also; at the best; it was an agreement to enter into an agreement to sell by receiving the earnest money on a future date. However, undisputedly, that earnest money was never received by the defendants. Hence, the agreement to sell itself had not come into being. Therefore, the courts below have not committed any irregularity in recording the concurrent finding that claimed writing is not an agreement to sell which can be specifically enforced. This court does not find any ground to interfere with the concurrent finding of fact recorded by the courts below.

8. Otherwise also, the terms of the agreement itself show that it was not mandatory for the defendants to come before the sub-Registrar to accept the earnest money. Unless the earnest money was accepted by the defendants, they cannot be said to have bound-down themselves to the further terms of the agreement, qua agreeing to sell the property in question. Section 14 of the Specific Performance Act specifically provides that any agreement which is dependant upon the volition of the

parties, would not be specifically enforced. This case also falls in the same category.

9. Still further, although the plaintiff has asserted that the token money was received by father of the defendants. But the father of the defendants is not even arrayed as party in the suit; to admit or deny the receipt of the money as such. Therefore, even the initial alleged writing does not carry any legal value, so far as the claim against defendants is concerned. Needless to say that it is not even the case of the plaintiff that any money was paid to the defendants as such.

10. No other argument was raised. No error of law or violation of procedure, as such, has been pointed out by the counsel for the appellant. No substantial question of law has been pointed out by the counsel for the appellant before this court.

11. In view of the above, finding no ground to interfere, the appeal is dismissed.

29th JANUARY, 2020 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*