

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

RSA-527-2013 (O&M)
Date of decision : 09.01.2020

Mahesh ...Appellant

Versus

Mehar Chand and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellant.

Mr. Adish Gupta, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the perverse judgments passed by both the Courts below, granting the alternative relief to the plaintiff a decree for refund of the earnest money alongwith interest @ 12% p.a. while declining the relief of possession by way of specific performance of the agreement to sell dated 04.04.2007.

Both the Courts have held that the plaintiff-appellant (Mahesh) has successfully proved the execution of the agreement to sell in his favour by Mehar Chand-defendant No.1 on 04.04.2007, agreeing to sell the suit land for a total consideration of ₹2,60,000/-, on receipt of ₹50,000/- as earnest money. The plaintiff, on the target date fixed for the execution and registration of the sale deed, went to the office of Sub-Registrar and got his attendance marked. However, defendant did not come forward. Therefore, the plaintiff was always ready and willing to perform his part of the contract.

The suit was filed on 22.05.2007 i.e. after a period of 19 days

from the target date fixed in the agreement to sell, for execution and registration of the sale deed.

Defendant No.1-Mehar Chand contested the suit on the ground that he did not enter into any agreement to sell. He also did not receive earnest money as alleged. It was pleaded that he has sold the suit land to defendant No.2 pursuant to a prior agreement to sell.

Defendant No.2 filed a separate written statement and pleaded that defendant No.1 had entered into a prior agreement to sell with defendant No.2 on 03.04.2007. The sale deed Ex.D2 dated 18.04.2007 has also been executed and registered in his favour, pursuant thereto.

It may be significant to note that defendant No.1-Mehar Chand is son of Sukhdev Singh son of Lekha whereas defendant No.2-Darshan Singh is son of Bhim Singh son of Lekha. Hence, defendant No.1 and 2 are from the same family. Grandfather of both the defendants was common.

The alleged agreement to sell dated 03.04.2007 is attested by marginal witness Smt. Santo wife of Mehar Chand-defendant No.1. When she appeared in evidence as DW4, she admitted that her husband (defendant No.1) had got a fake agreement to sell and sale deed executed in favour of Darshan Singh-defendant No.2.

Strangely, both the Courts ignored these facts while returning a finding that agreement to sell dated 03.04.2007 allegedly executed by defendant No.1 in favour of defendant No.2 stands proved and since it is prior agreement, therefore, defendant No.2 has a better right. Both these facts (defendant Nos.1 and 2 are cousins and Smt. Santo has admitted that the agreement to sell and sale deed in favour of defendant are fake) are apparent

on the record. In view of the aforesaid facts, both the Courts have erred in declining the relief of specific performance of the agreement to sell in favour of plaintiff. The alleged agreement to sell executed by defendant No.1 in favour of defendant No.2 and subsequent sale deeds was only to frustrate the rights of the plaintiffs. While deciding the suit for specific performance of the agreement to sell, no doubt, the Court has jurisdiction to exercise discretion, however, the same has to be exercised in accordance with well settled principles of law. Such discretion cannot be exercised in an arbitrary manner. The facts of this case are clear like crystal.

Keeping in view the aforesaid facts, judgments passed by both the Courts are set aside. The decree for alternative relief granted by the Courts below is substituted by the decree for possession by way of specific performance of the agreement to sell on payment of balance sale consideration alongwith interest at the rate of 8% p.a.. Defendant No.2 is called upon to join legal heirs of defendant No.1 who is now no more alive in execution of the sale deed.

Accordingly, the present appeal is allowed with costs of ₹50,000/- in favour of appellant-plaintiff and against the respondents-defendants.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

09.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No