IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4794-2016 (O&M)
Date of decision : 28.01.2020

Malkiat Singh

...Appellant

Versus

Ranjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.S. Rangi, Advocate with
Mr. Saurav Bhatia, Advocate and
Mr. H.S. Malhi, Advocate for the appellant.

Mr. Varun Sharma, Advocate for the respondent.

****

ANIL KSHETARPAL, J.

The defendant-appellant has filed the present Regular Second Appeal against the findings of facts arrived at by the Courts below decreeing the suit for specific performance of the agreement to sell with consequential relief of permanent injunction.

In the considered view of this Court, following question arises for consideration:-

a) Whether it is incumbent upon the Civil Court to apply its mind, while exercising discretion to grant or not to grant a decree for specific performance of the agreement to sell while examining the case with reference to agreement to sell executed prior to the amendment in the Specific Relief Act, 1963 by the Act No.18 of 2018?

In nutshell, the facts are that the plaintiff-Ranjit Singh filed a suit on 27.08.2010 for specific performance of the agreement to sell dated 16.11.2009 with respect to land measuring 8 kanals 7 marlas for agreed sale consideration of ₹2,20,000/-, on receipt of ₹80,000/- as earnest money. Parties had agreed to get the sale deed executed upto 15.06.2010. The plaintiff stated that on the date, agreed to for execution and registration of the sale deed, he visited the office of Registrar for execution and registration of the sale deed but the defendant did not come forward. Thereafter, the plaintiff served a notice dated 25.06.2010 on the defendant calling upon him to get the sale deed executed and registered but there was no response.

Defendant-appellant-Malkiat Singh contested the suit and stated that he had signed and thumb marked certain blank stamp papers as a security towards loan of ₹80,000/- with interest at the rate of 4% per month from the plaintiff-Ranjit Singh. It was pleaded that he was introduced by his brother Baldev Singh who lives in Ludhiana town. Since, the defendant was in need of money, therefore, Baldev Singh arranged the loan from the plaintiff. The plaintiff had directed him to bring a copy of jamabandi. The defendant also took a stand that the plaintiff had deducted a sum of ₹8000/- towards interest for a period of six months and paid him only ₹72,000/-. It was further pleaded that market rate of the property is not less than ₹20,00,000/- per acre and, therefore, there is no occasion for the defendant to enter into the agreement to sell for a sum of ₹2,20,000/- for the land measuring 8 kanals 7 marlas (more than 1 acre).

Learned trial Court, as well as the First Appellate Court, have decreed the suit filed by the plaintiff while granting decree for specific performance of the agreement to sell on payment of balance sale consideration.

Normally. while examining the correctness of the judgments passed by the Courts below, High Court is loathe in re-examining the entire evidence. However, such practice is not without exception. Whenever, the Court feels that the Courts below have failed to do justice, the Court is duty bound to re-appreciate the evidence even at the stage of Regular Second Appeal. As far as finding of the Courts that execution of the agreement to sell has been proved on payment of earnest money, this Court does not find that there is any scope for interference. However, in the facts and circumstances of the case, this Court is of the considered view that the Courts below have erred in granting relief of specific performance of the agreement to sell. The plaintiff, in the opinion of this Court, is entitled to alternative relief of refund of earnest money alongwith interest. The reasons for the aforesaid opinion are as under:-

i) On careful reading of the agreement to sell which is scribed on five sheets (folios) of stamp paper of ₹100/- each and on careful examination of the same, it is apparent that spacing between the lines in sheets/stamp papers No.1, 2, 3 and 4 is much more when compared to spacing between the lines on sheet No.5. In fact, the spacing between the lines on sheet Nos.1, 2, 3 and 4 is almost double than the spacing between the lines at sheet No.5. This creates a doubt and rather support the case of the defendant that his signatures and thumb impressions were obtained on the blank stamp papers and thereafter agreement to sell has been fabricated/manipulated on already signed blank stamp papers.

ii) It is proved that minimum collector rate, notified by the Deputy Commissioner, for execution and registration of the sale deed with respect to an agricultural land situated in Village Laprann, District Ludhiana was ₹5,40,000/- per acre. The total minimum price of the land as per the collector rate with respect to the land measuring 8 kanals 7 marlas comes to ₹5,63,625/- whereas the agreement to sell shows that total sale consideration agreed to be paid is ₹2,20,000/- only. No reason has come on record to justify as to why the defendants agree to sell the property at approximately 40% of the collector rate, which is normally less than the market rate.

iii) In the State of Punjab, non-judicial stamp papers are sold through licenced stamp vendors. Such stamp vendors are required to issue non-judicial stamp papers for specific purpose after entering in their notebook (Register). On careful reading of the stamp papers, it is apparent that 'no purpose' for which the stamp papers were purchased has been mentioned whereas it is required to be mentioned. Still further, at the relevant time, agreement to sell was required to be scribed on a stamp paper worth ₹300/-. No reason has been given as to why the stamp papers worth ₹500/- were used for scribing the alleged agreement to sell. The Stamp Vendor has also not been produced by the plaintiff in evidence.

iv) In the agreement to sell, it is written that the possession of the land in dispute has been handed over to the plaintiff at the time of agreement to sell. However, the plaintiff has neither pleaded this fact in his plaint nor any evidence to that fact has been led.

v) It is admitted case of the plaintiff that he met the defendant for the first time on the day the alleged agreement to sell was executed on 16.11.2009. It is not the case of the plaintiff that he had inspected the land in question which is located in village 20 KM away from the Ludhiana City and thereafter entered into the agreement to sell. Normally, a prudent person, would not agree to purchase agricultural land or any other immovable property without seeing its location etc. Before purchasing any immovable property, it is normally expected to visit/inspect the property and see its location. It is not the case of the plaintiff that there was any talk previous to 16.11.2019 or he was intending to purchase any property in Village Laprann.

vi) Further, apart from two marginal witnesses of the agreement to sell, the alleged agreement to sell is also signed by Jaswinder Singh and Baldev Singh, of course brother and nephew of the defendant. This has to be examined in the context of defence of the defendant that he came to his brother who had promised him to get the loan from the plaintiff. Both have deposed that agreement to sell was only a security document covering the loan advanced.

Section 20 of the Unamended Specific Relief Act, 1963 mandates the Court to exercise its discretion while deciding a suit for specific performance of the agreement to sell. No doubt, such discretion is required to be exercised in accordance with the well settled principles of law, however, such discretion is important facet of Administration of Justice while deciding the suits for specific performance. No doubt, Section 20 has recently been substituted by the Act No.18 of 2018, however, in the present case, the agreement to sell is prior to the date, when the amendment came in effect. Therefore, Section 20 as it existed in the Statute Book would be applicable.

Keeping in view the aforesaid reasons recorded, this Court has come to a conclusion that the judgments and decrees passed by the Courts below for specific performance of the agreement to sell are required to be substituted with a decree for refund of earnest money amounting to ₹80,000/- alongwith interest at the rate of 12% per annum from the date of institution of the suit i.e. 27.08.2010 till realisation.

Accordingly, the present Regular Second Appeal is partly allowed.

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

28.01.2020 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No