In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 3931 of 2014 (O&M)

Date of Decision: 03.02.2020

Balbir Singh and Another

... Appellant(s)

Versus

Jagtar Singh (since deceased) through his L.Rs and Another

... Respondent(s)

AND

2. Regular Second Appeal No. 4760 of 2014 (O&M)

Balbir Singh and Another

... Appellant(s)

Versus

Hamir Singh (since deceased) through his L.Rs and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Amarjit Markan, Advocate for the appellants.

Mr. Mohammad Yousaf, Advocate for respondent No.1.

Anil Kshetarpal, J.

By this judgment, Regular Second Appeal No. 3931 of 2014 and Regular Second Appeal No. 4760 of 2014 shall stand disposed of. Learned counsel, appearing for the parties, are common and they are agreed that both the appeals can be conveniently disposed of by a common judgment. Learned trial Court as well as the first Appellate Court although passed separate judgments of even date, however, in view of the arguments, the issue arising for consideration is common. The plaintiff/appellants, in both the appeals, have filed regular second appeals against the concurrent finding of fact arrived at by the Courts below. Both the appellants are also appellants in another appeal.

The plaintiffs filed two suits for passing a decree of specific performance of the agreements to sell dated 13.10.2005. In both the suits, it is claimed that defendants-Jagtar Singh, in one suit and Hamir Singh and Surjit Singh, in another suit, had agreed to sell the land measuring 9 bighas and 10 biswas in one suit and 13 bighas 11 biswas in second suit. It was agreed that the land shall be sold at the rate of ₹ 1,16,000/- per bigha. Under one agreement to sell, ₹ 50,000/- was stated to have been paid as earnest money, whereas in second agreement ₹ 1,00,000/- was stated to have been paid as earnest money. The parties had agreed to execute the sale deeds by 01.07.2006. It will be significant to note here that Jagtar Singh, defendant No.1 in Civil Suit No. 38 is son of Hamir Singh, wheres Surjit Singh is brother of Hamir Singh. In other words, one agreement to sell is with two brothers, whereas the second agreement to sell by Jagtar Singh, son of Hamir Singh and nephew of Surjit Singh.

The defendants contested the suit and pleaded that agreements to sell have been drafted on blank signed/thumb impressions. It has been pleaded that in fact, Surjit Singh had borrowed a sum of ₹ 1,50,000/- as a loan from plaintiff-Balbir Singh and pronote and receipt were executed on 12.12.2005. However, Balbir Singh had put a condition that the loan would be advanced only if the defendants agreed to give blank thumb marked/signed stamp papers as security. Since the defendant was in dire need of money, therefore, next day after purchasing the stamp papers and putting their thumb impressions and signatures, the stamp papers were handed over to Balbir Singh,. They further pleaded that there is a prior agreement to sell in favour of Parbatjit Singh in one case and Randhir Singh in another case dated 09.12.2005. Pursuant to the aforesaid agreements to sell, sale deeds have also been executed on 29.12.2005 & 30.12.2005. Parbatjit Singh and Randhir Singh have also filed separate written statement claiming that they are bonafide purchasers.

Both the Courts, after appreciating the evidence, have found that the plaintiffs are not entitled to the decree for specific performance of the agreements to sell. Both the Courts have held that plaintiff-Balbir Singh has admitted that Surjit Singh had taken a loan of ₹ 1,50,000/- vide promissory note and receipt dated 12.12.2005. Both the Courts have found that this fact lends credence to the case of the defendants. It has also been found that the agreements to sell, propounded by the plaintiffs, cannot be ordered to be specifically performed as there are material contradictions in the evidence of various witnesses examined by the plaintiffs. The Courts have found that the two prior agreements to sell dated 09.12.2005 in favour of Parbatjit Singh and Randhir Singh are proved and hence, have superior right.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by the Courts below.

Learned counsel for the appellants submitted that the Courts below have erred in dismissing the suits filed by the plaintiffs. He further submitted that the conclusion drawn by the Courts below is erroneous. He, hence, prayed that the judgments & decrees be set aside. He further submitted that the Courts below have committed an error in refusing to even pass a decree for refund of earnest money/loan along with appropriate rate of interest.

On the other hand, learned counsel for the respondent has pointed out that the plaintiffs have not prayed for an alternative relief and, therefore, in absence of the prayer no decree for refund can be passed.

This Court has considered the submissions of learned counsel for the parties. In the considered view of this Court, both the Courts below, by elaborate judgments, have discussed the evidence led by the parties and on proper appreciation thereof, the impugned judgments have been passed. Although learned counsel for the appellants has submitted that the judgments suffered from error, however, learned counsel failed to point out any substantive error in misreading or non-reading of the evidence. Learned counsel also failed to point out any error of law while delivering the impugned judgments.

However, there is some substance in the arguments of learned counsel for the plaintiff/appellants with regard to refund of earnest money. Even if both the Courts below have found that the agreements to sell cannot be specifically performed because of various reasons recorded therein, still it is the case of the defendants themselves that an amount of ₹ 1,50,000/- was borrowed by Surjit Singh from Balbir Singh and executed pronote and receipt as noticed above. In these circumstances, although it is correct that no prayer for an alternative relief has been prayed for, however, this Court being also of the Court of equity, is required to balance the equities. The defendants have not pleaded that they have refunded an amount of ₹ 1,50,000/-. It is also not the case of the defendants that a separate suit for recovery has been filed. However, these directions shall not be treated as precedent.

Keeping in view the aforesaid facts, while exercising jurisdiction under Section 151 CPC i.e. inherent powers, this Court passes a decree in favour of plaintiff-Balbir Singh against Surjit Singh for recovery of ₹ 1,50,000/- along with the interest at the rate of 7.5% from the date of loan i.e. 12.12.2005 till its realization. The aforesaid amount would be recoverable from Surjit Singh. With these modifications, both the appeals are dismissed. The miscellaneous application(s), if any filed in both the appeals, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 03, 2020
"DK"

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