

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

RSA-4414-2017 (O&M)

Date of decision : 24.01.2020

Jagdish Singh Bhalla (since deceased) through his LRs and another

...Appellant(s)

Versus

Bal Krishan Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Ashwini Kumar Bansal, Advocate with
Mr. Praveen Gupta, Advocate and
Ms. Meenal Garg, Advocate for the appellant(s).

Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Malika Aggarwal, Advocate and
Mr. Ankit Chowdhri, Advocate for LRs of respondent

ANIL KSHETARPAL, J. (ORAL)

CM-11482-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 47 days in refiling the present appeal is condoned.

Application is allowed.

CM-18435-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of the sole respondent as mentioned

in para 2 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Amended memo of parties is taken on record.

Main case

Defendant No.1 through his legal heirs has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for specific performance of the sale deed dated 07.06.2005.

It is significant to note that originally the plaintiff had filed the suit for mandatory injunction. However, during the pendency of the suit, ad valorem Court fees was permitted to be affixed.

This case has chequered history. Late Sh. Jagdish Singh Bhalla was owner of Booth No.20, Sector-27 D, Chandigarh. He through his attorney (son) entered into an agreement to sell with one Sh. Raj Kumar. However, Raj Kumar did not come forward to perform his part of the contract. Thereafter, late Sh. Jagdish Singh Bhalla through his attorney (son) entered into an agreement to sell with Hardev Chander. It was provided in the agreement to sell that Hardev Chander can himself get the sale deed executed or it can be got executed in the name of his nominee. Jagdish Singh Bhalla applied for getting 'No Objection Certificate' from Chandigarh Administration with permission to transfer the suit property in favour of Bal Krishan Sharma. The aforesaid permission was granted. However, Raj Kumar previous agreement holder

also applied for 'No Objection Certificate'. When this fact came to the notice of Chandigarh Administration, officials called the parties and Raj Kumar filed an affidavit that he does not claim any right to purchase. Thereafter, as noticed above, 'No Objection Certificate'/permission to sell was granted in favour of Bal Krishan Sharma, the plaintiff-respondent.

Parties got scribed a sale deed on requisite stamp papers and put their signatures/thumb impressions alongwith signatures/thumb impressions of marginal witnesses. It was agreed that a sum of ₹10,00,000/-, an amount of sale consideration, shall be paid before the Registrar.

However, events took an unfortunate turn. The Registrar refused to register the sale deed. He rather put lines on the face of the sale deed as if it is being cancelled. This was because of a wrong communication from the Estate Office.

Defendant-Jagdish Singh Bhalla, filed a CWP No.9736 of 2005 for issuing directions to U.T. Administration to register the sale deed. The same was allowed on 12.05.2006 directing Jagdish Singh Bhalla to appear before the Registrar and get the sale deed executed. The plaintiff appeared on the date fixed by the High Court i.e. 08.06.2006 but the defendants did not appear and get the sale deed registered.

Forced by the circumstances, the plaintiff filed the present suit. The defendants contested the suit on the ground that receipt of ₹8,10,000/- as per agreement to sell does not represent a true picture. The defendants had only received a sum of ₹5,00,000/-. It was further pleaded

that the signatures on the blank documents were obtained. He further pleaded that the defendants had attended the office of Registrar on 02.07.2006.

On appreciation of evidence, the trial Court as well as First Appellate Court, have decreed the suit filed by the plaintiff.

This Court has heard the 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 appellant(s) submitted that an amount of ₹10,00,000/- paid before the Sub-Registrar through draft by the plaintiff had been returned and, therefore, the plaintiff is liable to pay the aforesaid amount. He referred to the statement of account of the plaintiff to establish that fact. He further submitted that the plaintiff has concealed material facts from the Court as he did not disclose that the amount of ₹10,00,000/- stands credited in his account and, therefore, the plaintiff is not entitled to discretionary relief.

On the other hand, learned counsel for the respondent-plaintiff has submitted that the statement of account had been produced by the plaintiff himself and he has no quarrel with the fact that an amount of ₹10,00,000/- is due and payable and shall be paid on handing over the possession at the time of registration of the sale deed.

In view of the aforesaid facts, it would not be appropriate for the Court to deny the relief to the plaintiff-respondent on the ground that he has concealed the factum of return of ₹10,00,000/- particularly when

the plaintiff himself has produced the statement of account and admit that the aforesaid amount is payable.

Plaintiff-respondent has already suffered enough on account of various unfortunate events which took place.

In view thereof, there is no ground to interfere. However, the plaintiff shall be bound to pay an amount of ₹10,00,000/- alongwith interest at the rate of 12% per annum from 07.06.2005 till the payment within 2 months from today.

Accordingly, the present Regular Second Appeal with aforesaid modification is dismissed.

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

24.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No