

S.No.121

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

RSA No.1925 of 2019 (O&M)

Date of Decision:24.02.2020

Balwinder Singh (deceased) through LRs Appellants

Vs.

Sukhwinder Singh and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. G.S. Sandhu, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiff in the original suit, challenging the concurrent judgments and decrees passed by the Courts below; in a suit for possession through specific performance, whereby the suit filed by the plaintiff has been decreed only qua return of earnest money.

Shorn off unnecessary details, the facts giving rise to the present appeal are that the plaintiff filed a suit claiming that the defendant No.1 entered into an agreement dated 12.07.2010 to sell the suit property to him at the rate of Rs.5 lakhs per acre. In the process, an amount of Rs.16 lakhs was received by the defendant No.1 from him, as earnest money. The target date fixed for execution of the sale deed was fixed to be 12.07.2012. The plaintiff always remained ready and willing to get the sale deed executed. However, the defendant No.1 had wrongly transferred the suit property in favour of defendant No.2 vide transfer deed dated 20.07.2010. Accordingly, the plaintiff had prayed for a decree for execution of the sale deed in his favour.

On the other hand, the defendants contested the suit and pleaded that the plaintiff is the maternal uncle of defendant No.1. The agreement in question was collusive and meant for defrauding the other defendants. Still further, it was pleaded that the land has further been transferred in favour of defendant No.2. Therefore, there was no more scope for transfer of the property in favour of the plaintiff by way of execution of any sale deed.

The parties led their respective evidence before the trial Court. After appreciating the evidence, the trial Court held the agreement to be valid but granted the relief of only return of earnest money to the plaintiff. Feeling aggrieved against the same, the plaintiff preferred the appeal before the lower Appellate Court. However, the lower Appellate Court as well; dismissed the appeal filed by the plaintiff. Hence, the present appeal has been preferred.

While arguing the case, learned counsel for the appellant has submitted that the lower Appellate Court proceeded with the file quite casually. Even the issues framed in the suit have wrongly been referred to by the lower Appellate Court in its judgment. In fact; the issues which have only been referred to by the lower Appellate Court; were the initially framed issues by the trial Court. However, those issues were subsequently changed and some additional issues were also framed. Still further, it is submitted that once the property is transferred by defendant No.1 in favour of the defendant No.2, then the plaintiff would be left with no means to recover even his earnest money from defendant No.1. Hence, it is submitted that the appeal be allowed and a decree for specific performance by way of

execution of the sale deed; be granted.

Having heard the counsel for the appellant and perused the case file, this Court does not find any substance in the argument of the learned counsel for the plaintiff/appellant. First of all, the prayer made by the plaintiff in the suit itself makes an alternate prayer for recovery of the earnest money. Therefore, if the suit filed by the plaintiff is decreed qua the alternate relief claimed by the plaintiff himself, then the plaintiff cannot be permitted to take a turn around and find fault with the decree passed by the Courts below, as such.

Although it has come on record that the defendant No.1 had transferred the suit property in favour of defendant No.2, yet it has also come in the testimony of the wife of the plaintiff only, who is now representing the plaintiff, that the said transfer was made by the defendant No.1 in the presence of the plaintiff himself. The transfer deed has been executed by defendant No.1 within 15 days of the alleged agreement in favour of the plaintiff. Therefore, right from the beginning, the plaintiff was well aware that the defendant No.1 was no more owner of the suit property, who could execute any sale deed in favour of the plaintiff. Since the plaintiff himself was present at the time of the execution of the transfer deed by defendant No.1 in favour of defendant No.2, therefore, the plaintiff cannot even take a plea of the transfer in favour of the defendant No.2 being non-bonafide. There is not even any plea taken by the plaintiff in that regard. Moreover, the said transfer deed in favour of defendant No.2 was executed by defendant No.1 in the year 2010 itself. However, the plaintiff never filed any suit for challenging the said transfer, nor he ever amended

the plaintiff in the present suit to include the challenge to the said transfer in favour of defendant No.2. Still further, another fact which deserves to be noted is that although the plaintiff claims the agreement to sell in his favour to be dated 12.07.2010 and the transfer deed in favour of the defendant No.2 is 20.07.2010, despite that the suit has been filed by the plaintiff only on 14.08.2012, after about two years. This also shows that the plaintiff was well aware and had acquiesced into transfer of the suit property by defendant No.1 in favour of the defendant No.2. Hence, this Court does not find any illegality or perversity with the findings recorded by the Courts below.

Needless to say that alternate relief has already been granted by the Courts below in favour of the plaintiff. Since the suit property already stood transferred in favour of defendant No.2, to which even the plaintiff had acquiesced, the decree for execution of the sale deed in favour of the plaintiff could not have even been passed by the Courts below.

Although learned counsel for the appellant has submitted that the lower Appellate Court has committed illegality by not referring to all the issues framed by the trial Court in his judgment and, therefore, has not followed the provisions as contained in Order 41 Rules 30 and 31, however, this Court does not find any substance even in this argument. The lower Appellate Court has rightly appreciated the controversy and has adjudicated as such, therefore, any error of formal non-compliance of the provision, as mentioned by the counsel above, would not affect the validity of the decree as such.

No other argument was raised.

In view of the above, finding no merit in the present appeal, the same is dismissed.

February 24, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No