

S.No.105

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

RSA No.2789 of 2018 (O&M)

Date of Decision:19.02.2020

Smt. Mukesh Yadav

.....Appellant

Vs.

Yadvender Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Abhishek Yadav, Advocate for the appellant.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the defendant in the original suit, challenging the concurrent judgments and decrees passed by the Courts below, whereby the suit filed by the plaintiff for recovery of earnest money paid in an agreement to sell; along with interest, has been decreed.

The parties herein would be referred to as the plaintiff and defendant as they were described in the suit.

The brief facts giving rise to the present appeal are that the plaintiff had filed a suit stating therein that the defendant had entered into an agreement to sell dated 13.12.2011 with him. The agreement was qua sale of two shops. The plaintiff had paid an amount of Rs.10,50,000/- to the defendant as earnest money. The target date for execution of the sale deed was fixed to be 15.02.2012. On the target date, the plaintiff attended the Office of the Sub-Registrar; along-with balance sale consideration. However, the defendant did not turn up. Thereafter, the plaintiff got his presence marked before the Sub-Registrar. To ensure that the sale deed is executed, the plaintiff had even got issued a notice dated 22.02.2012 to the defendant for this purpose. On receipt of the notice, the defendant met the plaintiff and told him that her husband was ill and that she be granted some

more time for registration of the sale deed. Even as per the date fixed in the notice, the plaintiff again appeared before the Sub-Registrar on 21.03.2012; and also got marked his presence there. The plaintiff had always been ready and willing to get the sale deed executed. However, the defendant did not execute the sale deed in favour of the plaintiff. Later on, the plaintiff came to know that the defendant had already sold the shops in question; even before entering into agreement with the plaintiff. Hence, the agreement stood frustrated, being fraudulent. Accordingly, the plaintiff filed the suit for recovery of the earnest money along with interest, total of which was quantified to be Rs.14,28,000/-.

The defendant had contested the suit on merits and denied the agreement. It was further pleaded by the defendant that the plaintiff and the husband of the defendant were business partners. Therefore, had the defendant entered into agreement to sell qua the shops in question, the plaintiff would have been aware of the pre-existing fact qua the sale of the shops by the defendant. Still further, it was pleaded that the plaintiff had not even stated as to when he came to know about the prior sale of shops by the defendant.

The parties led their respective evidence. To prove the agreement in question, the plaintiff examined the stamp vendor, the scribe, as well as; the attesting witness of the agreement. The payment of the money was also proved by proving the receipt. To prove the fact that the defendant had already sold the shops in question, the plaintiff produced the prior sale deeds executed by the defendant, as Ex.P6 and Ex.P.8. The Registry Clerk from the Office of the Sub-Registrar was also summoned to

prove the said sale deed. Accordingly, the suit filed by the plaintiff was decreed. Feeling aggrieved against the same, the appellant/ defendant preferred appeal before the lower Appellate Court. However, even the appeal filed by the defendant was dismissed by the lower Appellate Court. Hence, the present appeal has been preferred.

Arguing the case, learned counsel for the appellant/defendant has submitted that the agreement in question has not been proved by the plaintiff. Still further, it is submitted that since it is a suit for recovery of the money, therefore, the limitation in the case would start running from the date, the money was paid by the plaintiff. However, the suit has been filed beyond three years from the date of payment of the earnest money. Hence, the suit of the plaintiff is time barred.

Having heard the counsel for the appellant and having perused the file, this Court does not find any substance in the argument of the learned counsel for the defendant. The evidence led on file by the plaintiff in the form of stamp vendor and the attesting witness has duly proved the execution of the agreement. Not only this, the plaintiff has also proved on record that he was present before the Sub-Registrar twice, once on the original target date fixed in the agreement and second time; after he had issued notice to the defendant for execution of the sale deed. Hence, both the Courts below have not committed any illegality in holding that the plaintiff has been successful in proving the execution of the agreement.

This Court also does not find any substance in the argument of the counsel for the appellant/defendant qua the suit of the plaintiff being time-barred. Of course, in case of a suit for recovery of money; per se, the

limitation is to start from the date of the payment of the money, however, that limitation is applicable only in cases of pure money transaction of advancement of loan or otherwise. In case of suit for recovery of the earnest money, the said limitation would not start running from the date of payment of the earnest money because any necessity of suit for recovery of earnest money would depend upon the contingency of non-performance of contract of sale by the other side. In that case, the limitation would start from the date of refusal of the execution of the agreement; as defined under the agreement; or from the date of knowledge of the fraud, if any, found committed in the alleged agreement. The Courts below have rightly relied upon the provisions of Section 17 of Limitation Act to hold that the plaintiff was entitled to the protection of Section 17 for being saved from the limitation; because he had pleaded fraud in execution of the agreement to sell and he has succeeded in proving the same by showing that the shops in question already sold by the plaintiff. In any case, the plaintiff has filed the suit well within the period of three years from the date fixed for execution of the sale deed; as per the terms of the agreement. Hence, this Court does not find any irregularity or perversity in the findings recorded by the Courts below qua the aspect of limitation as well.

No other point was argued.

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

February 19, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No