

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2595 of 2000 (O&M)

Date of decision : December 9th, 2022

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Mukhtiar Singh

.....Appellant

vs.

Diwan Chand

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. A.K. Khunger, Advocate for the appellant.

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H. S. Madaan, J.

1. In nutshell, the facts of the case are that, plaintiff – Mukhtiar Singh s/o S. Bhag Singh, resident of Kotkapura, Tehsil and District Faridkot, had filed a suit against defendant Diwan Chand s/o Mohan Lal r/o Chopra Bagh, Kotkapura, Tehsil and District Faridkot, seeking possession of residential house constructed on area measuring 100 sq. yards, situated near Railway Line Kotkapura, by specific performance of agreement to sell dated 4.12.1995 and in the alternative praying for recovery of Rs.45,000/- i.e. refund of earnest money of Rs.24,500/- alongwith interest/damages.

2. As per case of the plaintiff, the defendant had agreed to sell house in suit to him on 4.12.1995 for Rs.45,000/- receiving Rs.24,500/- as earnest money. The date for execution and registration of the sale deed was fixed as 4.12.1996 on payment of remaining consideration amount, though it was mentioned in the agreement that possession of the house had been delivered to the plaintiff, but as a matter of fact, it was not so and the possession had remained with the defendant. According to the plaintiff, 4.12.1996, the date fixed for execution of the sale deed was a holiday, as such on 5.12.1996 the plaintiff, after informing the defendant went to the office of Sub Registrar, Faridkot, for performance of his part of contract. At that time he was having balance sale consideration amount and money to bear registration expenses etc. with him. However, defendant did not turn up to execute the sale deed and get it registered. The plaintiff had presented an application before Sub-Registrar, Faridkot, to get his presence marked.

3. On 09.12.1996, with the intervention of respectables, the defendant again received Rs.1,300/- as remaining part of sale consideration and date of the sale deed was extended to 4.2.1997. On 4.2.1997, the plaintiff again went to the office of Sub Registrar, Faridkot and remained present there, having balance consideration amount with him, as well as, money to bear the expenses for execution and registration of the sale deed. However, at that time also, the defendant backed out with the result, the sale transaction

could not be completed. Plaintiff had got his presence marked by moving an application before the Sub Registrar, Faridkot. According to the plaintiff, he has always been ready and willing to perform his part of contract, but the defendant dragged his feet in the matter giving rise to a cause of action to the plaintiff to bring the suit in question.

4. On notice, the defendant appeared and filed written statement contesting the suit, raising various legal objections, contending that the suit was not maintainable; that no agreement to sell had been entered into between the parties and the agreement set up by the plaintiff is a forged and fabricated document. Refuting the remaining assertions, he prayed for dismissal of the suit.

5. Replication was filed by the plaintiff, controverting the allegations in the written statement filed by the respondent, whereas the averments in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed :-

1. Whether defendant agreed to sell house measuring 100 sq yards with the plaintiff vide agreement to sell dated 4.12.1995 and received Rs.24,500/- as earnest money ?
OPP
2. Whether the plaintiff is entitled for possession of the house in dispute by way of specific performance of the agreement to sell dated 4.12.1995 or in the alternative for recovery of

Rs.45,000/- ? OPP

3. Whether the plaintiff always remained ready and willing to perform his part of the agreement? OPP

4. Whether the agreement set up by the plaintiff is forged and fabricated and suit of the plaintiff is not maintainable in the present form? OPD

5. Relief.

7. The parties were given adequate opportunities to lead evidence in support of their respective claims.

8. During the course of evidence, of the plaintiff he examined PW-1 Parminder Kumar, Deed Writer, who had scribed the agreement to sell Exhibit P1, making an entry in that regard in his register as Exhibit P-2. This witness also proved receipt Exhibit P-3 and entry in the Register Exhibit P-4. Plaintiff further examined PW-2, Subash Chander, a marginal witness of agreement to sell Exhibit P-1; PW-3 Gopal Singh , another marginal witness to agreement to sell Exhibit P-1, who proved due execution of such agreement between plaintiff and the defendant, whereas PW-4 Mr. Kuljit Singh Barar, Advocate, a marginal witness of receipt Exhibit P-3, testified in that regard. Plaintiff got his own statement recorded as PW-5 and repeated on oath his case as given in the plaint. With that the evidence of the plaintiff got concluded.

9. In rebuttal, defendant – Diwan Chand, appearing as DW-1 repeated on oath his case, as given in the written statement.

Thereafter he closed his evidence.

10. After hearing the arguments, the trial Court decided issue No. 1 in favour of the plaintiff and against the defendant. Issue No. 2 was decided, observing that plaintiff was not entitled to decree for specific performance, however he was entitled to alternative relief of recovery of Rs.45,000/- from the defendant. Issue No. 3 was decided in favour of the plaintiff and against the defendant. Issue No. 4 was decided against the defendant and in favour of the plaintiff. As a result of the findings on issues, the trial Court of Additional Civil Judge (Senior Division), Faridkot, vide judgment dated 18.1.1999, dismissed the suit of the plaintiff for possession by way of specific performance of agreement to sell dated 4.12.1985, whereas the alternative remedy of recovery of Rs.45,000/- was granted to him.

11. Feeling aggrieved by the judgment passed by the trial Court, the plaintiff had preferred an appeal before the District Judge, Faridkot, which after contest, was dismissed.

12. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court, craving for grant of main relief of possession by way of specific performance of agreement to sell .

13. Notice of the appeal was given to the respondent, however, his service could not be processed. Later on a report was received that he has since expired. However, counsel for the appellant stated that respondent was very much alive when the appeal was filed and he is not aware of the legal representatives of such respondent and no instructions have been given by the appellant in that regard, whom he has not been able to contact since long. Therefore, he is

unable to file an application for impleading legal representatives of the respondent.

14. I have heard learned counsel for the appellant, besides going through the record.

15. In this case, both the Courts, by considering facts and circumstances of the case, in light of the evidence brought on record by the parties, came to the conclusion that an agreement to sell had been entered into between the parties on 4.12.1995 and the plaintiff has been ready and willing to perform his part of contract but transaction could not be completed on account of the default committed by the defendant. However, the plaintiff was not found entitled to discretionary relief of specific performance of agreement to sell, in that way, the alternative relief of refund of earnest money alongwith interest /damages was granted to him.

16. Both the courts below, keeping in view the facts and circumstances of the case, were of the view that alternative relief of recovery should be granted to the plaintiff. I do not see any reason to disagree with the courts below on that point.

17. Therefore, the appeal in question is bound to fail. The judgments passed by the courts below are upheld, whereas the appeal is dismissed with costs.

December 9th, 2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes/ No

Whether reportable Yes/ No