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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2689-2019 (O&M)
Reserved on 25.05.2022
Date of decision : 26.05.2022

Satpal Singh .....Appellant

Versus

Usha Singh and Others .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mrs. Rana Ghuman, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant No.1-appellant against the concurrent findings of fact returned by both the Courts below and decreeing the suit for recovery filed by the plaintiff-respondent No.1.

Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for recovery of Rs.6,65,500/- i.e. Rs.4,64,000/- being the principal amount on account of earnest money paid by the plaintiff-respondent No.1 to defendant Nos.1 and 4 (appellant and respondent No.4 herein) on the basis of an agreement to sell dated 27.05.2011. It was averred in the plaint that one Kulwinder Singh son of Balbir Singh who is the neighbour of the plaintiff-respondent No.1 and also known to her husband, namely, Sheel Kumar, introduced defendant-respondent No.4 to them by stating that the defendant No.1-appellant is running a business of property dealer in the name and style of M/s Khalsa property dealer near Nam Dev Chowk. Defendant-respondent No.4 along with Kulwinder Singh visited the house of the plaintiff-respondent No.1 on 16.05.2011 and represented to them that they had carved out a colony namely, Kings Land, at Village Theth which was a PUDA approved colony. Due to their allurement, plaintiff-respondent No.1 and her husband identified two plots bearing No.63 and 64 in the colony and since defendant No.1-appellant had represented to plaintiff-respondent No.1 that the deal qua the plots had been finalized by the defendant No.1-appellant to the original owners, hence, the defendant No.1-appellant had every right to sell. Accordingly, an agreement was entered into and the deal was struck at the rate of Rs.1,45,000/- per marla. The defendant No.1-appellant is stated to have received an amount of Rs.1,40,000-/ as token money and on 27.05.2011, when the agreement was executed, an amount of Rs.3,24,000/- was paid by cheque in the presence of marginal witnesses and the cheque was encashed by the defendant No.1-appellant. It was further the case that the date of execution of the sale deed was extended on different occasions. However, the defendant No.1-appellant did not come forward to execute the sale deed. It was further averred that on 06.09.2013 the plaintiff-respondent No.1 discovered that the defendant No.1-appellant was never the owner of the property and, hence, the suit for recovery was filed. The suit was contested by the defendant No.1-appellant wherein it was admitted that an agreement was executed between him and the plaintiff-respondent No.1 and that he had received an amount of Rs.4,65,000/-. It was further stated that the plaintiff-respondent No.1 was never ready and willing to perform her part of the contract.

On the basis of the pleadings of the parties and the evidence produced, the Trial Court decreed the suit of the plaintiff-respondent No.1 holding therein that the defendant No.1-appellant failed to show how he is the owner of the suit property. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by defendant No.1-appellant and the same was also dismissed vide impugned judgment and decree dated 20.03.2019. Hence, the present regular second appeal by the defendant No.1-appellant.

Learned counsel for the defendant No.1-appellant has contended that the suit for recovery was not maintainable and secondly that the amount given to the defendant No.1-appellant was only Rs.1,40,000/- while the suit has been decreed for much more.

Heard.

Though an argument has been raised that the suit for recovery was not maintainable, however, learned counsel for the defendant No.1-appellant is unable to substantiate the argument as to how the suit for recovery was not maintainable. In the present case the plaintiff-respondent No.1, on discovering that she had been cheated, filed the present suit for recovery. The defendant No.1-appellant has been unable to show by way of any evidence as to how he had the authority to enter into an agreement to sell when he was neither owner nor had any authorization to further sell the land. In view of the fact that by way of the present suit the plaintiff-respondent No.1 is seeking to challenge an agreement which was got entered into by way of fraud, the suit for recovery would be maintainable.

The next argument raised by learned counsel for the defendant

No.1-appellant that only an amount of Rs.1,40,000/- was given to him while, however, the suit had been decreed for much more, also deserves to be rejected. A perusal of the judgments and decrees passed by the Courts below reveal that in the written statement it was admitted that an amount of Rs.4,65,000/- was paid by the plaintiff-respondent No.1. However, it was stated that the remaining earnest money was not paid by the plaintiff-respondent No.1 on the stipulated date and, hence, the amount stood forfeited. In view of the pleadings as well as clear admission, the argument raised by learned counsel is rejected.

No other argument has been raised by learned counsel for the defendant No.1-appellant. No question of law, much less any substantial question of law, arises for determination in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

26.05.2022 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No