

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

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**RSA No.3713-2019(O & M)
Date of Decision : 28.04.2022**

Rajesh Prabhakar

...Appellant

Versus

Jaswant Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr.Manuj Nagrath, Advocate
for the appellant

ANIL KSHETARPAL, J (ORAL):

While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiff has filed the present appeal.

It is the case of the plaintiff that defendant No.4 (Harjit Singh) was the owner of the property. Defendants No.1 to 3, who are mother and brothers of defendant No.4 are alleged to have entered into an agreement to sell on behalf of defendant No.4. Defendant No.4 was ex-parte. Defendants No.1 to 3 claim that the agreement to sell is a result of fraud and in fact there is interpolation in the date of performance of agreement to sell. The defendants further claim that their predecessors entered into an agreement to sell for sale of the property on 17.11.1997 @ Rs.84,000/-per acre in favour of Balbir Singh son of Santa Singh, therefore, it was not possible to sell the property to the plaintiff @ Rs.40,000/- per acre.

Both the courts have found that defendant No.4 is neither signatory nor defendants No.1 to 3 have any right to enter into an agreement on behalf of defendant No.4. The Court further found that the case of the plaintiff falls flat as he is not in possession of the property. The plaintiff has admitted that he has lived in the village only for a day and does not know

about the existence of the tubewell or the crop if any cultivated. The Court

further found that while appearing in evidence, the plaintiff has projected a different story. He claims that there was an agreement to sell with respect to 288 kanals of land which was executed a 1½ year prior to the agreement to sell in question dated 12.12.2000, thus, both the courts dismissed the suit.

Heard learned counsel representing the appellant and with his able assistance perused the paper book.

Learned counsel contends that defendant No.4 was ex parte and therefore, the Courts should have drawn adverse inference. He further contends that the courts should have at least ordered refund of the earnest money i.e. Rs.2 lakhs along with the interest.

Admittedly defendant No.4 is the owner of the suit land. He never executed the agreement to sell in favour of the plaintiff. The plaintiff also does not claim that defendant No.4 entered into an agreement to sell with him. It is the case of the plaintiff that defendants No.1 to 3 promised that defendant No.4 will execute the sale deed. Defendant No.4 has not given any attorney to defendants No.1 to 3 or ever authorised them to enter into an agreement to sell on his behalf. In these circumstances, the suit for specific performance against defendant No.4 could not be decreed because there is no privity of contract between plaintiff and defendant No.4. In such circumstances, the question of adverse inference will not arise because the plaintiff is required to stand on his own legs.

With respect to the second argument, it may be noticed that both the courts have held that the plaintiff while appearing in evidence has given out a different story. He claims that the agreement to sell was with respect to land measuring 288 kanals on payment of consolidated sum of Rs.7 lakhs. He failed to produce in evidence that Rs.2 lakhs were separately paid.

in their share. The last sale deed was executed in favour of the plaintiff in the year 1999. In these circumstances, the Courts have refused to grant decree for refund of the amount.

This Court does not find that the appellant has made out a ground to interfere with the concurrent findings of fact. The civil suit is required to be decided on preponderance of probabilities. In the present case, on appreciation of evidence of the plaintiff, the Court has found that the plaintiff failed to prove that Rs.2 lakhs were paid as the earnest money independent from the payment of Rs.7 lakhs.

Learned counsel representing the appellant further contend that in the previous round, the first Appellate Court vide judgment dated 17.08.2016 directed the Court to decide issue No.3-A, which has not been complied with.

It is evident that the first Appellate Court has held that issue No.3-A, which is with regard to readiness and willingness on the part of the plaintiff is insignificant because the plaintiff has failed to prove the agreement to sell in his favour from defendant No. 4. Once the plaintiff has failed to prove the agreement, the question of readiness pales into insignificance.

No ground to interfere with the concurrent findings recorded by the courts below.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

28.04.2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No