IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 5507 of 2017 (O & M)
Date of decision : 14.11.2022

Matadin and others ......Appellants

Vs.

Bhoon and others ......Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Amit Kumar Jain, Advocate, for the appellants

TRIBHUVAN DAHIYA, J. (Oral)

CM No. 6642-C of 2022:

This is an application for restoration of the appeal, which was dismissed in default for non appearance of the appellant on 10.2.2020.

For the reasons mentioned in the application, the same is allowed. Appeal is restored to its original number and taken up today on board for disposal.

CM No. 6641-C of 2022:

This is an application for condonation of 196 days delay in filing the present appeal.

For the reasons stated in the application, the same is allowed. Delay of 196 days in filing the present appeal is condoned.

RSA No. 5507 of 2017 (O & M):

1. This is defendants' appeal against the judgment of reversal passed by the lower Appellate Court decreeing the suit for specific performance against them.

2. The facts of the case in brief are, respondent no.1/plaintiff (hereinafter referred to as 'the plaintiff') filed a suit for specific performance pertaining to land measuring 5 *kanal* 17 *marla* on the ground that an agreement to sell dated 5.5.2005 was entered into between her and the appellants/ defendants (hereinafter referred to as 'the defendants') for sale of the suit land in her favour for a total sale consideration of Rs.1,30,000/-; earnest money of Rs.30,000/- was paid. It was agreed to execute the sale deed within three months in terms of the agreement. Subsequently, a *tehrir/*writing was executed on 22.8.2005 by paying an amount of Rs.64,062.50/- in cash as additional earnest money. It was agreed to get the sale deed registered in terms of the agreement to sell in favour of the plaintiff on one month notice. The defendants failed to perform their part of the contract and refused to execute the sale deed. A legal notice dated 20.8.2008 was also served upon the defendants, but the sale deed was not executed, leading to filing of the suit.

3. Separate written statements were filed on behalf of the defendants. It was submitted that defendants no.1, 8, 9 and 13 to 15 had entered into the agreement to sell for their share only. They claimed that an amount of Rs.30,000/- was received by the defendants *qua* their share only, and they were present on the last date of agreement before the Sub-Registrar for execution of the sale deed but the plaintiff did not appear with the balance sale consideration. It was claimed that the rate of Rs.1,30,000/- per acre, mentioned in the agreement to sell, was only to save registration fee. Actually, it was orally agreed between the parties that the rate of sale would be Rs.31,30,000/-per acre. Since the plaintiff did not appear with the balance sale consideration of Rs.21,95,235/-, the sale deed could not be executed.

4. The suit was dismissed by the trial Court but the lower Appellate

Court reversed the findings and partly decreed the suit with costs. It was held by the lower Appellate Court that the plaintiff has proved execution of the agreement to sell with respect to those defendants who were signatories thereto, and, therefore, the said defendants cannot avoid responsibility to perform their part of the contract to the extent of their share. With respect to other defendants who were not signatories to the agreement to sell, they were held not bound by the same. Therefore, the land mentioned in the original agreement would stand reduced from 5 *kanal* 17 *marla* to the extent of shares of the defendants no.1, 9 and 13 to 15. Findings of the lower Appellate Court to that effect recorded in paras no.17 and 22 of the judgment are as under:

> 17. The execution of the agreement to sell Ex.PW1/1 and extended greement to sell Ex.PW3/1 are not disputed, however, defendants no.1, 9 and 13 to 15 in their written statement have admitted about the execution of said documents, thus, expressly admitting the transaction and its terms and conditions with the further admission of the receipt of additional payment of Rs.64,062.50/-. However, a twist came, when a legally inadmissible plea has been taken by them in the written statement to the effect that it was orally agreed between the parties that the rate of the land agreed to be sold was @ Rs.31,30,000/- per acre and the plaintiff committed fraud with the said defendants taking advantage of their relationship. This plea cannot be projected by the said defendants, in view of bar contained under Section 92 of the Indian Evidence Act, 1872, which excludes the oral evidence in order to contradict or vary or subtracting the terms and conditions of written agreement between the parties. The said defendants once having admitted the receipt of the earnest money and additional payment out of the sale price, now cannot be permitted to wriggle out of terms and conditions of agreement to sell and they are bound to own it.
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> 18 to 21 xxx xxx xxx
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> 22. Once the execution of agreement to sell is not the bone of contention between the plaintiff and those defendants, who were signatories thereto and further the share of the said defendants is separable, even after the partition of the erstwhile joint land of 70 kanal

2 marla, therefore, the said defendants cannot get away from their responsibility to perform their part of contract and they are bound to honour the agreement to sell to the extent of their share and even they are not entitled to receive the remaining sale consideration of Rs.1000/- in as much as now the land has been reduced from 5 kanal 17 marla to the extent of the shares of the defendants no.1, 9 and 13 to 15. The said defendants have already received the sale price to the extent of their share, therefore, the plaintiff is not required to pay anything to them at the time of execution of sale deed, however, she will be under a duty to pay the stamp and registration charges along with other incidental expenses, which are required to be paid at the time of execution of the sale deed.

5. The only argument raised by learned counsel for the appellants/defendants is that execution of the agreement to sell between the parties could not be believed since the same was not registered, and an unregistered document was inadmissible in evidence; the lower Appellate Court could not have based its findings on such document. The argument raised has no merits. It is no where required that agreement to sell has to be a registered document for being specifically enforced. It is a case where the defendants have not been able to dispute both, the agreement to sell (Ex.DW1/1) and the extended agreement to sell (Ex.PW3/1). Since execution of the agreement as well as receipt of almost entire sale consideration stands admitted by the defendants, no exception can be taken to the findings recorded by the lower Appellate Court decreeing the suit *qua* the signatories thereto.

6. Therefore, there is no error of law in the impugned judgment and decree passed by the lower Appellate Court. No substantial question of law arises for consideration.

7. Dismissed.

8. Pending miscellaneous application(s), if any, stands disposed of as

having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

14.11.2022
Ashwani

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No