

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

RSA-6128-2018 (O&M)

Date of pronouncement: 13.12.2022

Ramesh

...Appellant

Versus

Krishan and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Om Pal Sharma, Advocate for the appellant.

Mr. Vaibhav Narang, Advocate for respondent No.1.

Mr. Ajay Jain, Advocate for respondents No.2 & 3.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Krishan son of Zile Singh had filed a suit against defendants Ramesh, Kamlesh Devi and Sewamati seeking possession by way of specific performance of registered agreement to sell dt. 06.01.2009 in respect of land measuring 5K-3M out of total land measuring 164K-6M i.e. 103/3286 share comprised in khewat No.97 situated in village Dhiranwas, Tehsil & District Hisar; it is case of the plaintiff that defendant No.1 had executed the sale deed No.449 dated 08.07.2010 in favour of defendants No.2 and 3 on the basis of registered agreement dt. 06.01.2009, however, that sale deed is illegal, null and void and is liable to be set aside; the plaintiff craved for grant of permanent

injunction restraining the defendants from alienating, mortgaging, transferring or leasing out the suit property to anybody else except the plaintiff; according to the plaintiff, at the time of entering into agreement to sell dt. 06.01.2009 with the defendant No.1 for total sum of Rs.5 lacs, the plaintiff had paid a sum of Rs.4,50,000/- to him agreeing to pay the balance amount of Rs.50,000/- at the time of execution and registration of sale deed on 15.01.2010; the plaintiff has always been ready and willing to perform his part of the contract and on 19.01.2010, he went to the office of Joint Sub Registrar, Balsamand to perform his part of the contract having with him the remaining sale consideration of Rs.50,000/-; initially as per agreement to sell, the date of execution and registration of sale deed qua the suit property was fixed as 15.01.2010 but it was not the day to register the sale deed in the office of Joint Sub Registrar, Balsamand. However, on the next day, it was fixed for execution and registration of sale deed as 19.01.2010; the plaintiff went to the office of Joint Sub Registrar, Balsamand but defendant No.1 did not turn up to perform his part of the contract; defendant No.1 instead of performing his part of the contract in favour of the plaintiff got executed and registered the sale deed of suit property in favour of defendants No.2 and 3 on 08.07.2010 thereby violating the terms & conditions of agreement to sell; on refusal of defendant No.1 to execute the sale deed, the plaintiff had brought the suit in question.

2. On notice, defendant No.1 appeared and filed written

statement, contesting the suit raising various legal objections. On merits, contending that the plaintiff and defendant No.1 are cousins. Defendant No.1 was in need of money and he took a loan of Rs.2 lacs from the plaintiff as security for repayment of the loan, defendant No.1 got executed an agreement to sell dt. 06.01.2009. The agreement is only a document of security for repayment of loan of Rs.2 lacs and rate for similar land in the village is more than Rs.15 lacs per acre and nobody would sell his land measuring 5K-3M merely for Rs.5 lacs. It is beyond imagination that plaintiff would pay 90% of total consideration of amount of Rs. 5 lacs and in lieu of it will not get possession of any part of the land. There is no term in the agreement that possession of any part of the land would be given at any point of time to the plaintiff.

3. It is contended that defendant No.1 being owner in the possession of the land was within his right to transfer the same to anybody and he had rightly done so in favour of defendants No.2 and 3 delivering the possession to them. Therefore, the sale deed dt. 08.07.2010 is binding upon everybody.

4. The conclusion by the trial Court is that defendant No.1 had agreed to sell the suit property to the plaintiff for a consideration of Rs.5 lacs receiving Rs.4,50,000/- as earnest money without taking the possession of the suit property and for payment of balance amount a time of one year was agreed upon, however, some factors arose a suspicion in the mind of the Court as to why one would pay 90% of the

sale consideration as earnest money without taking the possession of property regarding which agreement had been entered into and for a small of Rs.50,000/-, why the purchaser waited for a long time of one year. Furthermore, this property has already been sold to defendants No.2 and 3, vide sale deed No.449 dated 08.07.2010, noting that in terms of Section 20 of the Specific Relief Act, the jurisdiction to grant decree of specific performance is discretionary and Court is not bound to grant this relief in every eventuality. It was not found desirable to grant relief of specific performance but refund of Rs.4,50,000/- by defendant No.1 to the plaintiff. The contention of defendant No.1 that he has already refunded the loan amount of Rs.2 lacs to the plaintiff was not accepted for the reason of the same having not been proved, therefore, the suit was decreed for recovery along with interest and costs.

5. Now coming to the judgment passed by learned Addl. District Judge, Hisar; in appeal, learned Addl. District, observing that it was not a fit case for awarding relief of specific performance, however, observed that an amount of Rs.4,50,000/- had been paid to the plaintiff, therefore, defendant No.1 was held liable to reply that amount along with interest.

6. I am of the considered view that the findings recorded by the Courts below are correct and there is no reason to differ with the same. The judgments passed are proper and appropriate, not suffering from any illegality or infirmity. No substantial question of law or fact is

involved in this case. The appeal is found to be without merit and is dismissed accordingly.

13.12.2022
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No