

Deen Dayal

...Appellant

V/S

Jasvir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gaurav Datta, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff/appellant is in second appeal before this Court assailing learned trial Court judgment and decree dated 04.05.2018, as upheld by learned First Appellate Court vide its judgment and decree dated 29.11.2022 whereby suit for declaration by cancellation of an agreement to sell dated 02.05.2012 executed by plaintiff and proforma defendants No.2 and 3 in favour of defendant No.1 regarding the land in dispute with consequential relief of permanent injunction, was dismissed.

3. Briefly stated, facts as noticed by Courts below are that Defendant No.1 entered into an agreement to sell with plaintiff and proforma defendants No.2 and 3 for purchasing their land measuring 56K-14 M @ Rs.67,50,000/- per acre along with all other rights appurtenant thereto. Plaintiff and proforma defendants No.2 and 3 executed an agreement to sell dated 02.05.2012 in favour of defendant No.1 and received Rs.20,00,000/- as earnest money. As per the terms and conditions of the agreement to sell dated 02.05.2012, the sale deed was to be executed on 30.09.2012 and the remaining amount of the sale price was to be paid at the time of execution and registration of the sale deed. Plaintiff and proforma defendant No.2 and 3 went to the office of the Sub Registrar along with balance

sale consideration and kept waiting for defendant No.1 and ultimately they got their presence marked and returned back. Plaintiff and proforma defendant No.2 and 3 always remained ready and willing to perform their part of contract but defendant No.1 failed to perform his part of contract as he was not ready with the balance sale consideration. One of the conditions, as stipulated in the agreement to sell, was that in case defendant No.1 failed to get the sale deed registered and executed within stipulated time, then the agreement to sell dated 02.05.2012 shall stand cancelled and the earnest money paid by him would also be forfeited. Therefore, plaintiff and proforma defendants No.2 and 3 are entitled to forfeit the earnest money. Plaintiff prayed that declaration be granted for cancellation of agreement to sell dated 02.05.2012 executed by plaintiff and proforma defendants No.2 and 3 in favour of defendant No.1 regarding the suit land. Plaintiff also prayed for permanent injunction for restraining defendant No.1 from making any recovery from plaintiff on the basis of said agreement to sell dated 02.05.2012 forcibly and illegally. Hence, the civil suit.

4. Upon notice, defendant No.1 appeared and filed written statement along with the counter claim contending that suit of the plaintiff is not maintainable. It was contended that plaintiff and proforma defendants No.2 and 3 alleged themselves to be the owners in possession of 56 Kanals 14 Marlas of land. Moreover, the agreement to sell was only signed by plaintiff Deen Dayal and receipt of earnest money was also signed by plaintiff only. They have cheated defendant No.1 by showing themselves to be owners in possession of 56 K 14M of land whereas they were only owners in joint possession of land measuring 46K 8M. Later on, defendant No.1 also came to know that prior to agreement in his favour, plaintiff and defendants No.2 and 3 had also executed another agreement to sell dated 07.11.2011 in favour of One Lakhvir Singh and received an earnest money of Rs.20,00,000/-. Defendant No.1 requested them a number of times to

prove the fact of their ownership and possession of land and to produce a copy of Jamabandi but they failed to do so. They have cheated not only defendant No.1 but also above said Lakhvir Singh too. With regard to forgery and cheating, defendant No.1 already filed an application before SSP, Fatehgarh Sahib on 04.10.2012. Defendant No.1 filed counter claim for recovery of Rs.40 lakh being double the amount of Rs.20 lakh paid by him as earnest money at the time of execution of agreement to sell in question from 02.05.2012 till its actual and final realization.

5. Replication was filed by plaintiff controverting the plea of defendant No.1 taken by him in his written statement and reiterated the version of his plaint.

6. Based on the rival pleadings, following issues were framed:

- “(1). Whether the plaintiff is entitled to the relief of declaration, as prayed for? OPP*
- 2) Whether the plaintiff is entitled to Permanent Injunction as claimed? OPP*
- 3) Whether the suit is not maintainable? OPD*
- 4) Whether the plaintiff is guilty of concealment of material facts, if so, its effect? OPD*
- 5) Whether the defendant No.1/counter claimant is entitled to recovery of Rs.40 lacs by way of refund of earnest money under the agreement dated 02.05.2012? OPD no.1.*
- 6) Whether the counter claim of defendant no.1 is not maintainable? OPP*
- 7. Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, issues No.1 to 5 were decided in favour of defendant No.1 and against the plaintiff and proforma defendants No.2 and 3. Issue No.6 was also decided in favour of defendant/counter claimant and against plaintiff. Consequently, the suit of plaintiff was dismissed and counter claim moved by defendant No.1 was allowed. Defendant No.1 was held entitled to recover the earnest money of Rs.20,00,000/- from plaintiff and proforma defendants No.2 and 3 along with interest @ 9% per annum from the date of

agreement to sell till the filing of suit. Defendant No.1 was also held entitled to recover the future interest @ 9% per annum on principal amount as well as the *pendente lite* interest @ 6% per annum on principal amount from the date of decree till actual realization of decretal amount.

9. Learned First Appellate Court dismissed the appeal of appellant/plaintiff, resulting in Regular Second Appeal by plaintiff before this Court.

10. In its judgment, the learned First Appellate Court, *inter alia*, observed as below:

“23. Hence, there is clear cut admission on the part of plaintiff/appellant that he was not owner in possession of the land which was entered into agreement with the defendant/respondent Jasvir Singh. The only plea taken by appellant/plaintiff that in the legal notice, the defendant is admitting their offer to agreement to sell despite knowing the fact that they are not owners in possession of 56K-14Marlas. But this argument of learned counsel for appellant-plaintiff does not inspire confidence.

24. Thirdly, Ld. Counsel for appellant vehemently argued that he has marked his attendance before the Sub Registrar, Bassi Pathana and proved Ex.P2 that he is ready and willing and shows his readiness and willingness. Whereas, defendant has not come present in terms of conditions of Ex.D3. But main point to be seen here whether appellant/plaintiff was in a position to get the sale deed executed, whether he was owner in possession of land mentioned in the agreement to sell. So what was the use of marking his attendance before Sub Registrar to show his readiness and willingness, when he was not in position to get the sale deed executed of land mentioned in the agreement to sell. On the other hand, the defendant has proved on record that plaintiff/appellant is not owner of the suit property as alleged by him then no useful purpose will be there by marking his presence as plaintiff was unable to get the sale deed registered in view of terms of the agreement. So marking of presence by the appellant/plaintiff before Sub Registrar, BassiPathana does not carry any weight that the defendant has not turned up to get the sale deed registered. Moreover, concealment on the part of earlier agreement to sell was also proved on file by the defendant.

25. So in view of the aforesaid discussion, I am of the considered view that Ld. Lower Court has rightly dismissed the suit of the plaintiff and has rightly allowed the counter claim of defendant no. 1 and rightly ordered that defendant no. 1 is held entitled to recover the earnest money of Rs. 20 Lacs from the

plaintiff and proforma defendants alongwith interest. The citations referred by Ld. Counsel for the appellant/plaintiff are not applicable to the facts of the present case as same are quite distinguishable.

26. In view of the above discussion, I find that Lower Court has rightly dismissed the suit of the plaintiff. There is no illegality in the judgment and decree dated 4.05.2018 passed by the Ld. Lower Court. Accordingly, I hold that present appeal is devoid of any merits and same is hereby dismissed and judgment and decree of the Ld. Lower Court are hereby affirmed.”

11. I have heard the learned counsel for appellant and perused the judgments of both the Courts below.

12. Mainstay of the grounds of appeal is that defendant No. 1 and proforma defendants No. 2 and 3 were aware, when they executed the agreement dated 20.05.2012 with the plaintiff-appellant for the purchase of land, that he (the plaintiff-appellant) had already executed an agreement qua the same land in favour of Lakhvir Singh. They were, therefore, precluded from backing out of the agreement on that ground. It is further contended that the plaintiff-appellant had led evidence showing that he was ready and willing to execute the sale deed but defendant No. 1 and proforma defendants No. 2 and 3 had failed to perform their part of the contract. The contentions are being noted only to be rejected.

13. It defies common sense and is totally unbelievable that if defendant No. 1 and proforma defendants No. 2 and 3 would have paid a huge amount of Rs. 20 lakhs as earnest money and entered into the agreement with the plaintiff for purchase of land, if at that time they had been aware of the aforesaid previous agreement executed by the plaintiff-appellant qua the same land in favour of Lakhvir Singh. The learned two Courts below have recorded a concurrent finding of fact as per record that the plaintiff-appellant was not the owner of the land which was the subject matter of agreement to sell executed by him in favour of defendant No. 1 and proforma defendants No. 2 and 3. Nothing on record has been

shown against the said finding. The learned first appellate Court observed that when the defendant had proved on record that the plaintiff-appellant was not the owner of the suit property, no useful purpose would be served by marking his presence in the office of the Sub Registrar, as he was unable to execute/ get registered the sale deed. To my mind, his hollow claim of being ready and willing to execute the sale deed was just meaningless. This being the position, defendant No. 1 and proforma defendants No. 2 and 3 stood discharged from any further obligation under the agreement.

14. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree.

15. Apart therefrom, the very head note as well as prayer of the suit reflects that a declaration has been sought that the agreement to sell be declared as cancelled and not binding on plaintiff. Being so, in case the prayer for declaration of the cancellation is to be accepted, the necessary consequences thereof would be that same is not binding on either side and resultantly would necessarily mean that plaintiff is not entitled to keep the earnest money which was given pursuant to the same very agreement, which is sought to be cancelled.

16. In the premise, learned Trial Court has rightly accepted the counter claim of defendants and passed money decree equivalent to the earnest money, which was given to plaintiff while entering into agreement to sell. To be also noted that the receipt of money is neither disputed nor even otherwise agreement to sell is under cloud. Cancellation of the same has been sought on the ground that since defendants lack financial capacity to pay the balance of the amount, therefore, plaintiff cannot be put to the terms and conditions in the agreement.

17. Plaintiff cannot approbate and reprobate in the same breath, inasmuch as the clauses which are advantageous to him, he does not want to get the same implemented *qua* him upon cancellation but the one which seems attractive *qua* retaining money he wishes the same to be implemented, notwithstanding that it is his own prayer that document may be treated as cancelled. Cancellation cannot be read in part and has to be read in totality and therefore, I see no grounds to interfere with the judgments and decrees rendered by the Courts below.

18. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

19. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

20. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

21. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

22. Pending application/s, if any, shall also stand disposed of.

23. No order as to costs.

(ARUN MONGA)
JUDGE

February 16, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No