

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.2097 of 2019 (O&M)

Date of Decision: 14.12.2023

Gurdev Singh

...Appellant

Versus

Sukhdev Singh

...Respondent

CORAM: ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Sukhmeet Singh, Advocate and
 Mr. K.S. Lakhanpal, Advocate
 for the appellant.

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved by the judgment and decree passed by learned Civil Judge (Senior Division), Moga (for short 'the trial Court') on 20.11.2015, whereby the Civil Suit filed by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') for seeking a decree for possession of the suit property as its owner, by way of specific performance of the agreement to sell, executed by the appellant-defendant (here-in-after to be referred as 'the defendant') in his (plaintiff's) favour on 13.06.2011, has been decreed to the effect that the defendant has been saddled with the liability to refund the amount of Rs.2.5 lac to him (plaintiff), along-with the interest @ 9% per annum from the date of execution of the said agreement till its realisation and the future interest @ 6% per annum as well as by the judgment and decree, as handed down by learned Additional District Judge,

Moga (for short 'the Lower Appellate Court') on 22.05.2018, dismissing the appeal moved by the defendant against the judgment and decree passed by the trial Court, except the modification therein to the extent of granting the interest @ 9% per annum till the date of decree and @ 6% per annum till the realisation of the decretal amount, he (defendant) has chosen to prefer the instant Regular Second Appeal to lay challenge to the same.

2. As per the brief factual-matrix, unfolded from the perusal of the file and culminating in the filing of the present appeal, the plaintiff filed the afore-said Civil Suit, while averring that the defendant had executed the above-referred agreement to sell the suit property to him, for an amount of Rs.4,16,732/- and he had paid a sum of Rs.01 (one) lac to the defendant as earnest money and the date of execution and registration of the sale-deed was stipulated to be 13.09.2011, which was mutually agreed to be extended and was re-scheduled as 18.11.2011 and at that time, he (plaintiff) had paid another amount of Rs.1.5 lac to the defendant and an endorsement to this effect, was made on the afore-said agreement. He had always been ready and willing to get the sale-deed executed and registered in pursuance of the above-mentioned agreement but the defendant did not perform his part of the same. The afore-said Suit had been decreed and the appeal preferred by the defendant before the Lower Appellate Court has also been decided, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-defendant in the instant appeal, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the defendant contend that Exhibit P2, the endorsement, as purported to have been appended by the defendant on the above-said agreement regarding the extension of time for the execution and registration of the sale-deed and the payment of Rs.1.5 lac by the plaintiff to the defendant, is a forged one as the defendant had not signed it nor had received the amount from the plaintiff as mentioned therein and rather, on the date as stipulated in the agreement for execution and registration of the sale-deed, the plaintiff was not having sufficient funds to pay the balance sale consideration and it being so, the defendant was not liable to pay any amount to him and therefore, the impugned judgments and decrees are not legally sustainable and hence, the same deserve to be set-aside.

5. The factum of the execution of the afore-referred agreement to sell by the parties on 13.09.2011 and of the payment of the earnest money to the tune of Rs.01 (one) lac by the plaintiff to the defendant at that time, go undisputed between the parties. Though the defendant alleges that the above-said endorsement on the agreement had been forged by the plaintiff and on the date as fixed for getting the sale-deed executed and registered, he was not having funds to pay the balance sale consideration but both the Courts below have concurrently held that from the evidence as adduced by the plaintiff on the record, the signatures of the defendant on endorsement Exhibit P2 stand proved. In view of these categorical findings, the contention qua the plaintiff not having funds on the stipulated date and therefore, his not being ready and willing to get the sale-deed executed and registered in pursuance of the afore-said agreement, pales into insignificance.

6. As a sequel to the fore-going discussion, it follows that the impugned judgment and decree passed by the trial Court, except the above-discussed modification therein by the Lower Appellate Court as well as the judgment and decree as handed down by the Lower Appellate Court, do not suffer from any illegality, infirmity, irregularity or perversity, so as to call for any interference by this Court. Resultantly, the Regular Second Appeal in hand, being devoid of any merit, stands dismissed.

14.12.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*