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

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RSA-2999-2019 (O&M)

Decided on : 04.10.2023

Navtej Singh Sanghera and another

... Appellant(s)

Versus

Sukhbir Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. B.S. Jaswal, Advocate and
Mr. Ankit Bhardwaj, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by defendants No.1 & 2 namely; Navtej Singh Sanghera and Major Singh, against the concurrent findings of decretal of suit.

2. Brief facts, necessary for adjudication of the case are that plaintiff – Sukhbir Singh (respondent herein) filed a suit for recovery of Rs.2,50,000/- along with statutory interest w.e.f. 18.12.2012 till the realization of the said amount on the strength of one agreement to sell dated 18.12.2012. Said suit was decreed by the learned Lower Court vide judgment & decree dated 16.09.2017.

Appeal filed by the defendants (appellants herein) was also dismissed by the learned First Appellate Court vide its judgment & decree dated 08.01.2019. Hence, defendants No.1 & 2 are before this Court by way of present Regular Second Appeal.

3. On the very outset, learned counsel for the appellants (defendants No.1 & 2) submits that on the similar facts and circumstances,

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there was another suit decreed in favour of plaintiff - Sukhbir Singh (respondent herein), for recovery of an amount of Rs.2,50,000/- along with statutory interest w.e.f. 18.12.2012.

4. Learned counsel points out that against the decretal of said suit, defendants No.1 & 2 (appellants herein) had filed one RSA No.9774 of 2018, before this Court, which was dismissed by the Coordinate Bench of this Court vide judgment dated 18.09.2019.

5. Otherwise also, I have gone through the findings given by the Courts below and am of the view that the reasoning given in the impugned judgments & decree is well founded. Objection raised by defendants No.1 & 2, that the plaintiff was never willing to perform his part of contract, as even in the suit, no prayer for seeking a decree for specific performance of contract, has been made, was not accepted. Learned Trial Court has observed that defendants No.1 & 2 were not even owners of the property, which was agreed to be transferred in the name of the plaintiff, on the basis of agreement to sell in question. Thus, suit for recovery has been rightly decreed.

Relevant findings recorded by learned Trial Court are as under:-

“xxx xx xxx xx

xxx xx xxx xx

The contention of Ld. Counsel for the defendant No. 1 and 2 is that the plaintiff should have filed a suit for specific performance of the contract in question whereas the plaintiff has filed suit for recovery of the earnest money paid to the defendant No. 1 and 2 and as such the suit is not maintainable, however I do not agree with this contention of

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Ld. Counsel for the defendant No. 1 and 2 as it has come on record that defendant No. 1 and 2 were not the owners of the property to be transferred in the name of the plaintiff on the basis of the agreement to sell in question. They were only having any agreement to sell in their favour executed by defendant No. 3 and 4 the original owners of the property agreed to be transferred in favour of the plaintiff by the defendant No. 1 and 2. Nothing has been brought on record by the defendant No. 1 and 2 to show that the defendant No. 3 and 4 had executed the sale deed in favour of defendant No. 1 and 2 of the property to be transferred to the plaintiff on the basis of agreement to sell executed in favour of the plaintiff by defendant No. 1 and 2 before the date fixed for execution of the sale deed by the defendant No. 1 and 2 in favour of the plaintiff. As the defendant No. 1 and 2 were not having the ownership right to be transferred to the plaintiff, the plaintiff could not have filed suit for specific performance and as such the suit of the plaintiff for recovery of the amount is maintainable.

However there was no contract between the plaintiff and defendant No. 3 and 4. Neither any amount has been paid by the plaintiff to the defendant No. 3 and 4, as such defendant No. 3 and 4 are not liable to pay anything to the plaintiff.

10. Accordingly these issue are decided in favour of the plaintiff and against the defendant No. 1 and 2.

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Issue No. 3 (RELIEF):

11. *In view of my discussion made above suit of the plaintiff for recovery of an amount of Rs.2,50,000/- is decreed along with interest @ 6% P.A. From the date of payment that is 18/12/2012 the date of execution of the agreement to sell between plaintiff and defendant No. 1 and 2 till realization, against defendant No. 1 and 2. However the suit of the plaintiff for recovery against defendant No. 3 and 4 is dismissed. Decree sheet be prepared. File be consigned to the record room.”*

6. Even, learned First Appellate Court in its paragraph No.23, has held that defendants No.1 & 2 have failed to prove that on the date fixed for execution of sale-deed i.e. 20.05.2023, they were owners of the property in question. Thus, respondent (plaintiff) is held to be entitled for the recovery of earnest money worth Rs.2,50,000/-. The relevant observations made by learned First Appellate Court in paragraphs No.23 to 25 are reproduced as under:-

“23. *There is nothing on the record to prove that the appellants were ever ready and willing to perform their part of the contract. They failed to prove that on the date fixed for execution of the sale deed i.e 20.5.2013, they were owners of the property in question. Thus, in the present case, the appellants were themselves at fault. So, this Court is of the view that it does not lie in their mouth to say that the earnest money worth Rs.2,50,000/- stands forfeited, as the respondent/plaintiff failed to fulfill his part of the contract.*

The facts of the case law, which have been referred by the counsel for the appellants, are entirely different from the facts of the case in hand, as in both the said cases, there was default on the part of the proposed vendee. However, in the case in hand, default was on the part of the vendor.

24. *In the light of above discussion, the findings of the trial court regarding issues no.1 and 2 are hereby affirmed. From the perusal of the written statements, which were filed by the defendants, it appears that no specific plea was taken by the defendants in their written statements to the effect that the respondent/plaintiff concealed the material facts from the court. So, there was no need of framing issue no.3. Even otherwise, there is nothing on the record to prove that the respondent/plaintiff has approached the court with soiled hands. Thus, the finding of the trial court regarding issue no.3 are also hereby affirmed.*

25. *Consequently, this appeal fails and the same is hereby dismissed. However, the parties are left to bear their own costs, in this appeal. Decree sheet be prepared accordingly. Trial court record be returned and appeal file be consigned to the record room.”*

7. Moreover, in RSA No.9774 of 2018, dealing with a similar issue, this Court in the judgment dated 18.09.2019, observed that the defendants (appellants in the present appeal also) were not even owners of the plot in question at the time of entering into agreement to sell, therefore, plot could not have been transferred in the name of the respondents.

Relevant findings recorded by the Coordinate Bench of this Court in judgment dated 18.09.2019, are as under:-

“7. *I have heard learned counsel for the appellants and have gone through the case file.*

8. *The lower court, while decreeing the suit of the respondent, has observed that the appellants were not having ownership right of the plot in question, therefore, they could not have transferred the same to the respondent, so instead of filing a suit for specific performance, the respondent chose to file a suit for recovery, which is maintainable. The findings of the lower court were affirmed in appeal by the first Appellate Court.*

9. *In the present case, execution of agreement to sell by the appellants in favour of the respondent is not disputed. It is also not disputed that originally the plot in question was owned by defendants No.3 and 4 and the appellants herein had entered into an agreement to purchase the same with defendants No.3 and 4, on the basis of which the appellants had executed the agreement to sell in question in favour of the respondent. The plot in question formed part of the land owned by defendants No.3 and 4 and they executed a power of attorney dated 11.11.2010 in favour of the appellants. The plot in question was meant to be sold for commercial purposes and for carving out a smaller plot out of the total piece of land, therefore, permission of the competent authority was required. Under these circumstances, the respondent*

would be justified in getting the sale deed executed in his favour only after the requisite sanction from the authorities concerned had been obtained in this regard by the appellants and they had ownership of the same. The evidence led by the parties made it clear that the appellants had themselves not become owner of the plot in question and they were only having an agreement to sell in their favour, meaning thereby, they were not competent to transfer the plot in question in favour of the respondent. In their written statement filed, defendants No.3 and 4 had stated that since the respondent did not purchase the plot, they had sold the same to someone else. In such an eventuality, when the plot in question had already been sold by defendants No.3 and 4 to some one else, the suit filed by the respondent for recovery of earnest money, instead of specific performance of the agreement to sell, was maintainable. There is sufficient evidence available on the record that on the date of execution of the sale deed, the respondent was present before the office of Sub Registrar along with the balance sale consideration, which he was having in his accounts maintained with Oriental Bank of Commerce and Punjab National Bank. There is no evidence available on record, which suggests that the respondent had not approached the court with clean hands or he had concealed the material facts from the court. During the course of arguments, counsel for the appellants miserably failed to point out anything wrong in the findings recorded by the

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courts below.”

8. After taking into consideration the observations made by the Courts below and also by this Court in RSA No.9774 of 2018, I am of the view that there is nothing illegal or perverse in the findings recorded by the Courts below while passing the impugned judgments & decree.

Even, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal *sans* merits, stands **dismissed**. Accordingly, judgments & decree passed by both the Courts below are affirmed.

(SANJAY VASHISTH)
JUDGE

October 04, 2023

J.Ram

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