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

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**RSA-5993-2019 (O&M)
Decided on : 05.09.2023**

Taranjit Singh

... Appellant(s)

Versus

Narinder Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. B.S. Bedi, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-17040-C-2019

For the reasons set out in the application, the same is allowed.
Consequently, the delay of 24 days in re-filing the accompanying appeal is
hereby condoned.

CM stands disposed of.

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1. Present Regular Second Appeal (RSA) has been filed by the plaintiff (appellant herein) against the concurrent finding recorded by both the learned Courts below, whereby, he has been held entitled to recover an amount of Rs.4.00 lakhs, along with interest.
2. The case of the plaintiff (appellant herein) is that defendant No.1 – Narinder Kumar (respondent No.1 herein) being an authorized agent of defendants No.2 to 7 (proforma respondents No.2 to 7 herein), entered into an agreement to sell dated 21.08.2006 with the plaintiff – Taranjit Singh, to sell the land measuring 1400 sq. yards bearing plot No.50, in his

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favour for a total sale consideration of Rs.26,60,000/- i.e. @ Rs.1900 per sq. yard. An amount of Rs.9.00 lakhs was received by defendant No.1 on 21.08.2006, as earnest money and target date i.e. date for execution of sale-deed, was fixed as 20.11.2006. Later on, on 23.08.2006, defendant No.1 received Rs. 5.00 lakhs more as earnest money from plaintiff's mother, and in this way, total earnest money of Rs.14.00 lakhs, had been received by defendant No.1 by virtue of agreement to sell dated 21.08.2006.

Thereafter, defendant No.1 requested plaintiff that he is ready to return an amount of Rs.5.00 lakhs received from the mother of the plaintiff. Accordingly, on 04.09.2009, defendant No.1 returned Rs.2.00 lakhs out of Rs.5.00 lakhs received from plaintiff's mother, and issued a post dated cheque of Rs.3.00 lakhs in favour of plaintiff's mother.

3. In the written statement filed by defendant No.1, execution of the sale agreement was admitted and it was also admitted that an amount of Rs.9.00 lakhs, and then additional amount of Rs.5.00 lakhs was received by him as earnest money.

It had been further pleaded that subsequently, a compromise was effected between the plaintiff and defendant No.1 in the presence of Pawan Kumar and Sandeep Kumar. Accordingly, Rs.2.00 lakhs in cash was paid to the plaintiff and two cheques for an amount of Rs.3.00 lakhs in favour of mother of the plaintiff namely; Gurdeep Kaur and one cheque amount to Rs.5.00 lakhs in favour of the plaintiff, were issued by defendant No.1. On bouncing of both the cheques, complaint under Section 138 of the Negotiable Instruments Act, was instituted by the plaintiff. Again compromise was effected in January 2011, and Rs.8.00 lakhs in cash was paid to the plaintiff, and thereafter, complaints under Section 138 of the

Negotiable Instruments Act, were withdrawn by the plaintiff and his mother.

4. For the purpose of returning of the original agreement to sell, Rs.4.00 lakhs was asked by the plaintiff, which was to be paid by defendant No.1, and defendants took a plea that said amount was paid back to the plaintiff in the presence of one Pawan Kumar.

5. After completion of the pleadings of the parties, vide order dated 21.02.2014, following 7 issues were framed by the learned Trial Court.

- “1- Whether plaintiff is entitled for possession by way of specific performance of agreement to sell as prayed for? OPP*
- 2- Whether plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3- Whether plaintiff remained ready and willing and is ready and wiling to perform his part of contract? OPP*
- 4- Whether plaintiff has concealed true and material facts from the Court? OPD*
- 5- Whether plaintiff has no cause of action to file present case? OPD*
- 6- Whether suit is undervalued for the purpose of court fee and jurisdiction? OPD*
- 7- Relief.”*

6. Learned Trial Court held that taking into consideration the pleadings and the evidence led by the plaintiff and defendant No.1, it is found that the plea of defendant No.1 of already making the payment of Rs.4.00 lakhs back to the plaintiff is not believable, therefore, total amount of Rs.4.00 lakhs, is recoverable from defendant No.1, and to that extent, the suit was decreed.

7. While holding so, learned Trial Court made its observation in paragraph No.26 of its judgment, and discussed the evidence of PW2 –

Gurmeet Singh, for the purpose of examining the stand of the plaintiff that an additional amount of Rs.5.00 lakhs was paid on 18.11.2006 to defendant No.1. PW2 – Gurmeet Singh stated in his affidavit that amount was paid by the plaintiff to defendant No.1 on 18.11.2006 in his presence. Further in the cross-examination, he stated that he does not know, who is Sandeep Singh, and where does he reside. Trial Court has also observed that Sandeep Singh while appearing as PW1, also stated that when an amount of Rs.5.00 lakhs was paid, he (Sandeep Singh) and Gurdeep Singh were present.

However, Trial Court found that this part of evidence is beyond pleadings, as there is nothing mentioned in the plaint regarding giving of the said amount of Rs.5.00 lakhs by the plaintiff to defendant No.1 on 08.11.2006. Relevant finding recorded in paragraph No.26 by the judgment of learned Trial Court, is reproduced as under in the extracted form:-

“..... To prove the fact of additional amount of Rs.5 Lakhs on 18.11.2006 plaintiff has further examined PW2 Gurmeet Singh who in his affidavit has stated that the said amount was paid by plaintiff to defendant No.1 on 18.11.2006 in his presence. However, in his cross-examination, he has stated that he does not know who is Sandeep Singh and where he resides whereas PW1 Sandeep Singh in his evidence has stated that when amount of Rs.5 Lakh was given, he and Gurdeep Singh were present. Moreover, there are no such pleadings in the plaint regarding the giving of Rs.5 Lakhs by plaintiff to defendant No.1 on 18.11.2006 and the evidence of PW1 and PW2 is beyond the pleadings of the plaintiff. It is well settled law that evidence beyond pleadings cannot be

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read into. Moreover, plaintiff in his affidavit and pleadings has stated that amount of Rs.14 Lakh was paid as earnest money. He has further admitted that the fact that Rs.8 Lakh was paid by plaintiff in complaint under section 138 Negotiable Instruments Act. Though plaintiff has placed on record cheque dated 18.11.2006 Ex.P12 which was issued by defendant No.1 in favour of the plaintiff. However, the said cheque is torn one and has not been proved as per law by the plaintiff.”

8. In the First Appeal, when this issue was again raised by the plaintiff, learned First Appellate Court also concluded in its judgment in paragraphs No.14, 15, 16 & 17, that amount of Rs.4.00 lakhs is recoverable from defendant No.1. Similarly, the finding was recorded that plea of defendant No.1 of already making of payment of Rs.5.00 lakhs is not proved. Paragraph Nos. 14, 15, 16 & 17 of the judgment passed by learned First Appellate Court are as under:-

“14. According to plaintiff/appellant defendant No.1 being authorized agent of defendants No.2 to 7 agreed to sell land measuring 1400 sq. Yards bearing plot No.50 to the plaintiff for total consideration of Rs.26,60,000/- @ Rs.1,900/- per sq. yards on 21.8.2006 and he received money of Rs.9 lac. The date for execution and and registration of the sale deed was fixed as 20.11.2006, which was extended from time to time. On 23.8.2006, the defendant No.1 received Rs.5 lac more as earnest money from the plaintiff through his mother. On 4.9.2009, the defendant No.1 returned Rs.2 lac

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out of Rs.5 lac and issued post dated cheque of Rs.3 lac on 22.2.2010 in favour of his mother. In this manner the earnest money comes to Rs.9 lac. The defendant No.1 had also received Rs.5 lac from the plaintiff and issued a cheque in his favour, which was dishonoured. He had filed complaint qua cheque No.272698 dated 5.5.2007. The plaintiff had/has been ready and willing to perform his part of the agreement to sell. The defendants No.2 to 7 are the owners of the suit land.

15. *The execution of the agreement dated 21.8.2006 between appellant/plaintiff Taranjit Singh and defendant/respondent Narinder Kumar is admitted fact. Receipt of an amount of Rs.14 lac is also admitted. According to defendant No.1, he had purchased the land from defendants No.2 to 7 on the basis of an agreement dated 8.3.2006. There is no privity of contract between the plaintiff and defendants No.2 to 7. Thus, the agreement dated 21.8.2006 is not binding upon defendants No.2 to 7. Even otherwise, the appellant now is not claiming the relief of specific performance, rather his claim is that he is entitled to recover an amount of Rs.9 lac instead of Rs.4 lac from defendant No.1. During proceedings before learned lower court, plaintiff/appellant Taranjit Singh appeared as PW3 and tendered his affidavit Ex.PW3/A in his examination in chief. In his cross-examination, he deposed that defendant returned an amount of Rs.2 lac in cash to his mother and also issued a cheque of Rs.3 lac in her favour. He has further admitted that he received cheque of Rs.5 lac to*

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him. It is clear that the plaintiff received Rs.5 lac from defendant No.1 and his mother also received Rs.5 lac from him (Rs.2 lac +Rs.3 lac). The plaintiff also admitted that after receiving an amount of Rs.8 lac from the defendant, the complaints against him were withdrawn. Thus, it is proved that out of Rs.14 lac total amount of Rs.10 lac has already been repaid by defendant No.1 to the plaintiff and there remains only an amount of Rs.4 lac.

16. *In the legal notice dated 14.11.2007, the plaintiff claimed that an amount of Rs.14 lac was paid as earnest money. It is not his plea that total amount of Rs.19 lac was paid to defendant No.1. Much stress has been given on the writing dated 4.9.2009 Ex.P2. The alleged signature of defendant No.1 on this document does not tally with his signatures on agreement Ex.P1 in any manner as can be seen with naked eye.*

17. *Learned lower court while passing the impugned judgment and decree observed that out of Rs.14 lac, the defendant No.1 had repaid Rs.2 lac in cash on 4.2.2009 and an amount of Rs.8 lac was received by the plaintiff and his mother in criminal complaints. Learned court also observed that defendant No.1 took plea that he paid Rs.4 lac to the plaintiff in the presence of Pawan Kumar, but this Pawan Kumar during his cross-examination has stated that he cannot tell the name of the colony or locality, where house of the plaintiff is situated. The defendant No.1 has failed to place on*

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record any receipt to prove payment of this amount of Rs. 4 lac nor there is any specific date when this amount was paid. Learned Court further observed that from the evidence placed on record, it is clear that the plaintiff paid an amount of Rs.14 lac as earnest money and received an amount of Rs.10 lac from the defendant No.1. Learned lower court has rightly partly decreed the suit of the plaintiff with costs for recovery of Rs.4 lac. The plaintiff/appellant is entitled to recover this amount from defendant No.1 only.”

9. As there is concurrent finding of fact recorded by the learned Courts below in regard to the amount paid by the plaintiff to defendant No.1, this Court does not find any substantial reason to interfere with well reasoned judgments & decree of the learned Courts below, therefore, the findings recorded by the Courts below are hereby affirmed.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**.

Civil Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 05, 2023

J.Ram

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