

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.560 of 2018 (O&M)

Date of Order: 06.07.2023

Bant Singh

.Appellant

Versus

Devinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parvinder Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J

C.M.No.1360-C-2018

1. Allowed as prayed for.
2. Annexures A-1 to A-9 are taken on record.

MAIN

3. This appeal has been filed by the plaintiff to lay challenge to the judgment and decree passed by the First Appellate Court while granting alternative relief of refund of earnest money along with the interest instead of relief of possession by way of specific performance of the agreement to sell.

4. In order to understand the controversy involved in the present case, it is important to note certain important facts, in brief:-

5. On 27.09.2005, the plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 17.12.2001 with respect to the agricultural land measuring 49 kanals and 19 marlas. It is the case of the plaintiff that Sh. Gurbachan Singh entered into an agreement to sell, for selling the aforesaid land @ Rs.2,00,000/- per acre. As per the

agreement to sell, out of the total sale consideration of Rs.12,50,000, an earnest money of Rs.10,00,000/- was paid. The parties agreed for the execution of the sale deed on 05.12.2002. The said land was already mortgaged with the bank. A supplementary agreement is stated to have been executed on 30.11.2002 to extend the date for execution of the sale deed to 05.07.2003. The plaintiff after attending the office of Sub-Registrar on 07.07.2003 as 05.07.2003 and 06.07.2003 were holidays, filed a suit for possession on 27.09.2005. The plaintiff claims that he sent a notice to the defendants on 15.02.2005, but the defendants did not respond.

6. The defendants contested the suit by claiming that the agreement to sell was never executed and it is a forged and fabricated document.

7. The trial court decreed the suit after recording a finding that the agreement to sell has been proved. However, the First Appellate Court on re-appreciation of the evidence found that the plaintiff was not entitled to a discretionary relief on account of various reasons recorded therein but chose to grant an alternative relief for the recovery of the amount that was already paid.

8. This Bench has heard the learned counsel representing the appellant at length. The learned counsel representing the appellant while relying upon the judgment passed by the Supreme Court in **Kirpal Kaur and another vs. Ritesh and others, 2022(6) SCC 620**, contended that in the absence of averments in the written statement that the agreement to sell was a loan transaction, the First Appellate Court has erred in modifying the judgment and decree passed by the trial Court. While elaborating, he

submits that after the death of Sh. Gurbachan Singh on 22.04.2003, the mutation of the land was not sanctioned and hence the suit could not be filed.

9. Under the unamended Specific Relief Act, the relief of granting the specific performance of the agreement to sell is discretionary. In the present case, the agreement to sell was executed on 17.12.2001. Hence, the un-amended Specific Relief Act is applicable to the facts of the present case.

10. In these kind of case, there are various factors that are considered by the Court before granting the relief of specific performance.

11. First and foremost, the plaintiff is stated to have paid almost 80% of the sale consideration at the time of execution of the agreement to sell but there was no delivery of possession.

12. Secondly, there is no explanation as to why originally the date for execution and registration of the sale deed was kept after a period of nearly one year.

13. Thirdly, the date for execution of the sale deed was further extended by 8 months.

14. Fourthly, after the plaintiff attended the office of Sub-Registrar on 07.07.2003, he did not take any action upto 15.02.2005 i.e. for a period of one year and 8 months from the agreed date, though, he is alleged to have paid Rs.10,00,000/- i.e. 80% of the earnest money. Thereafter, again the plaintiff slept over the matter and filed the suit after a period of more than 7 months.

15. Cumulatively, all the abovementioned factors have led the First Appellate Court to hold that there has been a a delay of 4 years in filing the

suit.

16. It is unusual for the buyer who has paid 80% of the earnest money to not take any steps to finalize the purchase of the property as soon as possible. The plaintiff's lack of action is especially puzzling given the fact that he has already paid a significant amount of money. The plaintiff has made an attempt to explain the delay while contending that the defendants did not re-pay the loan. It has come on record that the total loan amount was nearly Rs.10,000/-

17. The delay is also sought to be explained on the ground that Sh. Gurbachan Singh died on 22.04.2003 and there was a delay in the mutation of the land. It may be noted here that there was no reason to delay the execution of the sale deed on 05.12.2002 when Sh. Gurbachan Singh was alive. The sanctioning of mutation is not a pre-requisite to get the sale deed executed. The moment Sh. Gurbachan Singh died, the property passed on to the heirs and the sale deed could have been executed forthwith.

18. Lastly, the First Appellate Court has exercised its discretion based on sound principles of law which should not be interfered unless the court of second appeal comes to a conclusion that such discretion has been exercised arbitrarily, resulting in material error or perversity.

19. This court has carefully read the judgment passed by the Supreme Court in **Kirpal Kaur's case (supra)**. The Supreme Court while dismissing the appeal has upheld the judgment passed by the courts below while granting the relief of specific performance. Even if the observations made by the First Appellate Court with regard to the previous transactions related to money are kept out of consideration, still for the reasons which

have already been noticed, the discretion exercised by the First Appellate Court does not suffer from any perversity.

20. Keeping in view the aforesaid facts and discussion, the regular second appeal is dismissed.

21. All the pending miscellaneous applications, if any, are also disposed of.

July 06, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO