

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

RSA-5662-2018(O&M)

Date of decision:-9.1.2023

Joginder Singh

...Appellant

Versus

Gurpreet Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.B.S. Jattana, Advocate
for the appellant.

Mr.Atul Goyal, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Gurpreet Singh had filed a suit for recovery of Rs.16,74,375/- against defendant Joginder Singh on the averments that the latter representing that he was owner of land measuring 3 acres and about 2 bighas situated in the area of village Pherurain, Tehsil Raikot, District Ludhiana, had agreed to sell the same along with 2/3rd share in bore, passage, khal etc. with the plaintiff @ Rs.15,22,000/- per acre on 30.10.2010, receiving a sum of Rs.10 lakhs in cash as earnest

money; the written agreement to sell was attested by Pritam Singh son of Bachhittar Singh, Chand Singh son of Karnail Singh and Harjinder Singh son of Zora Singh, residents of village Bihala Khurd, Tehsil Tapa; in terms of that agreement, the defendant had agreed to execute and get registered the sale deed in favour of the plaintiff up to 20.12.2010 on receipt of the balance sale consideration amount, however, the date for execution and registration of sale deed was extended to 24.12.2010 on 20.12.2010 and at that time defendant had received a sum of Rs.6,25,000/- from the plaintiff; a writing in that regard was made on the original agreement to sell; however, on 24.12.2010, the defendant did not come present in the office of Sub Registrar, Raikot for the purpose of executing the sale deed in favour of the plaintiff, though the plaintiff remained present there along with sufficient amount to pay the balance consideration and to bear the other expenses for completion of the sale deed; the plaintiff had executed an affidavit in that regard duly attested by Sub registrar-cum- Executing Magistrate, Raikot; thereafter the plaintiff approached the defendant asking him to execute and get registered the sale deed but defendant put off the matter on one pretext or the other; the plaintiff served a legal notice dated 28.12.2010 upon the defendant calling upon him to come forward for completion of the transaction on 10.1.2011; that legal notice dated 28.12.2010 was received by the defendant but he did not come to the office of Sub

Registrar, Raikot on 10.1.2011 to perform his part of the contract, though the plaintiff remained present there having sufficient money to pay the balance consideration amount and to bear the expenses for execution and registration of the sale deed; the presence of the plaintiff was duly marked on application dated 10.1.2011 and affidavit of the even date; thereafter the plaintiff in order to file a suit for specific performance against the defendant obtained a copy of the jamabandi from Halqa Patwari on 11.1.2011 but he was shocked to know that defendant was not owner of the land measuring 3 acres and 2 bighas; as a matter of fact the actual area coming to his share was less than that, therefore, the agreement to sell dated 30.10.2010 was defective and plaintiff could not file a suit for specific performance on the basis of that agreement. Hence the plaintiff had filed a suit for recovery against the defendant i.e. refund of the money paid to the plaintiff along with interest @ 1.50% per month.

2. On notice the defendant appeared and filed written statement contesting the suit though admitting having entered into an agreement to sell with the plaintiff contending that the agreement was drafted at the instance of both the parties; there was a specific term/condition in the agreement that in case the purchaser resiled from the agreement, the earnest money would be forfeited by the seller; as a matter of fact the plaintiff was not ready and willing to get the sale deed executed and he evaded putting in appearance before

Sub-Registrar Raikot on 24.12.2010; on the other hand the defendant remained present there throughout the day; ultimately defendant submitted an application to Sub Registrar, Raikot for getting his presence recorded and an order was passed by Sub Registrar, Raikot on such application; the plaintiff was not present there on that day; the defendant was always ready and willing to perform his part of contract and had even get the land cleared from encumbrance fore that purpose; the plaintiff was not possessed of sufficient funds to pay the balance consideration amount to the defendant and to bear the ancillary expenses for completion of the sale deed, therefore, the earnest money paid by the plaintiff to the defendant stood forfeited and the agreement got cancelled, therefore, the plaintiff is not entitled to relief of refund of the money paid by him much less with interest; the mere fact that area of khasra No.1143 was mentioned in the agreement as 4 Kanals 0 marla instead of 3 kanal 14 marlas is of no consequence because that was a minor error and could be rectified as per enabling provisions of law. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

3. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to recovery of earnest money as prayed for on the basis of agreement dated 30.10.2010?

OPP.

2. *Whether the plaintiff is entitled to payment of interest? If so at what rate? OPP.*

3. *Whether the plaintiff remained ready and willing to perform his part of the contract for sale dated 30.10.2010? OPP.*

4. *Whether the defendant remained ready and willing to perform his part of the contract for sale dated 30.10.2010? OPD.*

5. *Whether the plaintiff has no cause of action to file the present suit? OPD.*

6. *Relief.*

4. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. During the course of evidence of the plaintiff, he got his own statement recorded as PW1 and repeated on oath his case as given in the plaint. He further examined PW2 Chand Singh and PW3 Harjinder Singh, who corroborated his version.

With that the evidence of the plaintiff was closed.

6. In rebuttal defendant Joginder Singh got his statement recorded as DW1 and reiterated on oath the version of defendant as given in the written statement but subsequently he did not appear to face cross-examination. The evidence of the defendant was closed by order of the Court on 21.7.2016.

7. After hearing arguments, the trial Court decided issues No.1 to 3 in favour of the plaintiff and against the defendant, issue

No.4 was decided as having become redundant being not pressed and issue No.5 was decided against the defendant and in favour of the plaintiff. As a result of findings on issues, the suit of the plaintiff was decreed with costs for refund of Rs.10 lakhs paid on 30.10.2010 along with interest @ Rs.1% per month from 30.10.2010 till date of decree; Rs.6,25,000/- paid on 20.12.2010 along with interest @ Rs.1% per month from 20.12.2010 till the date of decree and future interest @ Rs.6% per annum was granted on such amounts from the date of decree till actual realization. This was so done vide judgment and decree dated 6.2.2017.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Ludhiana, which was assigned to learned Additional District Judge, Ludhiana, who vide judgment and decree dated 5.3.2018 partly allowed the appeal upholding the judgment and decree passed by the trial Court with regard to decreeing the suit for recovery of Rs.16,25,000/- along with pendente lite interest @ 9% per annum from the date of filing of the suit till date of decree and future interest @ 6% per annum from the date of decree till actual realization. However, the relief granted by the trial Court with regard to payment of interest on the amount prior to filing of the suit was withdrawn.

9. Still feeling dissatisfied, the defendant has filed the present regular second appeal before this Court. Though no notice of

motion was issued in this case but the respondent has appeared on his own through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Both the Courts below considering the pleadings and evidence brought on file by the parties have returned the findings that plaintiff is entitled to recover the amount paid by him to defendant on the basis of agreement to sell dated 30.10.2010 and that the plaintiff has always been ready and willing to perform his part of contract, whereas it was not so with regard to defendant, who did not come forward to execute the sale deed in favour of the plaintiff. It has further been observed that the agreement to sell was defective inasmuch as the defendant was not owner of the total land for which he had entered into an agreement to sell with the plaintiff and his ownership was less than the area agreed by him to be sold to the plaintiff. Therefore, the plaintiff was justified in not suing the defendant for specific performance of agreement to sell because the defendant would not have been in a position to execute a sale deed in favour of the plaintiff for the area agreed by him to be sold to the plaintiff since he himself lacked title to that extent and his title was for less than area. However, the plaintiff successfully proved that he had remained ready and willing to get the sale deed executed in his favour by the defendant on the basis of agreement to sell dated

30.10.2010.

12. It may be mentioned here that the defendant does not deny the case of the plaintiff having entered into an agreement to sell with the plaintiff on 30.10.2010, receiving Rs.10 lakhs as earnest money and target date being fixed as 20.12.2010 and that the sale deed could not be executed on that date and date was extended to 24.12.2010 and the defendant had received a further amount of Rs.6,25,000/- from the plaintiff on 20.12.2010. The defendant had failed to make out a case that he had a right to forfeit the amount received by him from the plaintiff on account of any default committed by the plaintiff, rather plaintiff had successfully proved his readiness and willingness to get the sale deed executed in his favour throughout except when on perusal of copy of jamabandi, he came to know that defendant was not owner of total land, which he had agreed to sell with the plaintiff and his ownership was substantially less than that.

13. An important thing to be seen in this case is that as against the cogent, convincing and reliable evidence both oral as well as documentary adduced by the plaintiff, the defendant had stepped into the witness box as DW1 and got his examination-in-chief recorded but did not appear in the Court again to face cross-examination, in that way, his statement is incomplete and cannot be looked into. As such the evidence adduced by the plaintiff has gone

unrebutted and the trial Court was justified in ordering refund of the money received by the defendant from the plaintiff under agreement to sell dated 30.10.2010 on that very date as well as on 20.12.2010 along with interest to compensate the plaintiff for the period when he was deprived of that amount by the defendant.

14. Although learned counsel for the appellant has tried to find faults with the impugned judgments and decrees contending that the plaintiff was required to file a suit for specific performance though in that suit as an alternative relief, he could have sought decree for refund of earnest money with interest but he has not done so, therefore the suit should have been dismissed, but it was wrongly decreed by the trial Court and appeal against the judgment and decree passed by the trial Court was though partly allowed by the First Appellate Court but the substantial relief of grant of earnest money was allowed though with pendente interest @ 9% and future interest @ 6% per annum.

15. However, I do not find myself convinced by such contention. Once it is established on the record that defendant was not owner of the complete area regarding which he has entered into an agreement with the plaintiff, the plaintiff was justified in not filing a suit for specific performance of that agreement to sell and rather suing for refund of money paid by him to the defendant under the agreement along with interest and cost and the judgments and

decrees passed by the Courts below cannot be faulted for that reason. Furthermore, the plaintiff has although established on record that he has always been ready and willing to perform his part of contract though on account of the fact that defendant was not owner of the total land, which he had agreed to sell with the plaintiff, he had not filed a suit for specific performance of agreement to sell, rather filed a suit for recovery of amount with interest.

16. The judgment referred to by learned counsel for the appellant i.e. *Ravi Setia Versus Madan Lal and others, 2019(4) RCR(Civil) 916* is not applicable due to different facts and circumstances and the context in which such observations had been made.

17. Both the judgments and decrees are quite detailed and well reasoned passed as a result of proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No substantial question of law or fact arises in the appeal. Though the trial Court had granted interest on the amount of earnest money for the period prior to filing of the suit, however, learned Additional District Judge, Ludhiana in his discretion modified the judgment and decree denying interest for the period prior to filing of the suit to the plaintiff and rather granted interest pendente lite @ 9% per annum and future interest @ 6% per annum.

18. Findings no merit in the appeal, the same stands

dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.1.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No