

RSA-440 of 2019 (O&M)

2023:PHHC:159963

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

RSA-440 of 2019 (O&M)

Date of decision: 13.12.2023

Tehal Singh and another

.....Appellants

Versus

Charanjit Singh Turna

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Amit Dhawan, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal has been filed against the judgment and decree dated 28.07.2017 passed by the Court of learned Civil Judge (Junior Division), Nakodar, whereby suit filed by respondent No.1-plaintiff for specific performance was partly decreed as well as against the judgment and decree dated 06.10.2018 passed by the Court of learned Additional District Judge, Jalandhar, whereby appeal filed by the appellants against the judgment and decree dated 28.07.2017, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for specific performance of oral agreement to sell dated 19.08.2011 directing the defendants to execute the sale deed of two double storey shop Nos.28 and 30, fully described in the headnote of the plaint, situated in the area of Shahkot near Baba Mast Ram Lal

Market Shahkot, Tehsil Shahkot, District Jalandhar in favour of plaintiff. It is pleaded that defendant no.1 is owner of the aforesaid shops. Plaintiff purchased shop no.29 from defendant no.1 vide registered sale deed dated 16.08.2011 for a sum of Rs.2,42,000/-. On 19.08.2011, both the defendants offered the plaintiff to purchase shops no.28 & 30, for a sum of Rs.5,00,000/- in the presence of witnesses namely Harjinder Singh son of Jarnail Singh and Kulwinder Kaur wife of Charanjit Singh. Plaintiff accepted the said oral offer of the defendants and as per desire of defendant no.1, plaintiff issued a cheque no. 444605 for a sum of Rs.5,00,000/- in the name of defendant no.2 and this cheque was duly acknowledged by defendant no.2. The possession of shops no.28 & 30 was delivered to plaintiff by the defendants. In the presence of above said witnesses, it was agreed that the sale deed would be executed with one month prior notice to the plaintiff to be given by defendants. It was further agreed by both the parties that in case the plaintiff resiled from his part of the agreement, then the amount of sale consideration paid by plaintiff to the defendants, shall stand forfeited and in case, the defendants resiled from their part of agreement, the plaintiff would be at liberty to enforce the contract through the Court of law and was also entitled to recover the double of the sale consideration. Plaintiff had requested the defendants for execution of the sale deed for shops no.28 & 30 many times but they kept on putting off the matter on one pretext or the other. The cause of action accrued to the plaintiff in the month of September 2013, when both the defendants flatly refused to execute and register

the sale deed of shops no.28 & 30 in favour of the plaintiff. Plaintiff served notice dated 10.09.2013 to both the defendants to execute and register the sale deed but they did not pay any heed, rather, they threatened to alienate these two shops to some other persons, for which, they have no right. The plaintiff was ready and willing and is still ready and willing to perform his part of contract. Thus, plaintiff filed suit for specific performance of the oral agreement to sell dated 19.08.2011 or in the alternative the decree for the recovery of ₹5,00,000/- in favour of the plaintiff and against the defendants.

3. Upon notice defendants appeared and filed written statement, taking various preliminary objections. On merits, it is stated that earlier it was taur no.29 and not shop no.29 which was sold to plaintiff by defendants vide registered sale deed dated 16.08.2011. They never agreed to sell shops no. 28 & 30 to plaintiff for a sum of Rs.5,00,000/- as alleged in the plaint. In fact, plaintiff entered into an oral agreement to purchase shop no.28 for a sum of Rs.15,00,000/- and paid a sum of Rs.5,00,000/- vide cheque no. 444605 in the presence of the respectables. It is alleged that after the receipt of balance sale consideration, the defendants were ready to execute the sale deed of shop no. 28. They denied rest of the facts as mentioned in the plaint and stated that the plaintiff has not come to the Court with clean hands and prayed for dismissal of the suit.

4. Plaintiff filed replication controverting the averments as made by the defendants in the written statement and reiterated that of

plaint. From the pleadings of the parties, trial Court framed following issues :-

- “1. Whether plaintiff is entitled for specific performance of oral agreement to sell dated 19.08.2011 in respect of two double story shops no.28 and 30 as prayed for? OPP
2. In the alternative, whether the plaintiff is entitled for the recovery of 5,00,000/- as prayed for? OPP
3. Whether plaintiff is ready and willing to perform his part of agreement? OPP
4. Whether suit of the plaintiff is not maintainable? OPD
5. Whether plaintiff agreed for purchase of shop no.28 only for consideration of Rs.15,00,000/-? OPD
6. Whether the plaintiff has no locus standi & cause of action to file the present suit? OPD
7. Whether the site plan attached by plaintiff is not depicting the exact position of the spot? OPD
8. Whether plaintiff is not coming to the Court with clean hands and has concealed the true and material facts from the Court? OPD
9. Relief.”

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. Learned Trial Court vide judgment and decree dated 28.07.2017 after appreciating the evidence on the file, partly decreed the suit of the plaintiff for the recovery of Rs.5,00,000/- along with interest.

7. Feeling aggrieved, the appellants preferred appeal before the Appellate Court, which has been dismissed vide judgment and decree dated 06.10.2018.

8. Learned counsel for the appellants contended that once the respondent-plaintiff failed to prove sale of two shops by the appellants,

he has wrongly been granted the relief of recovery of Rs.5,00,000/-. He further contended that as the respondent-plaintiff failed to prove his readiness and willingness to get the sale deed executed, the suit filed by him was liable to be dismissed.

9. I have heard learned counsel for the appellants and perused the record.

10. Respondent-plaintiff filed suit for specific performance of oral agreement to sell dated 19.08.2011 with alternative prayer for recovery of Rs.5,00,000/- paid by him to the appellant-defendants as full and final sale consideration. Respondent-plaintiff miserably failed to prove that appellant-defendants orally agreed to sell shop Nos.28 and 30 for a total consideration of Rs.5,00,000/- to him nor any independent witness was examined by him in support of his claim. However, it is the admitted case of the parties that appellant-defendants had received an amount of Rs.5,00,000/- from the respondent-plaintiff vide cheque No.444605 in the presence of the respectables. It is settled that in case of breach of an agreement to sell except a very nominal amount no further amount can be forfeited by a seller.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

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13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

13.12.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No