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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Reserved on:- 24.11.2023

Pronounced on:- 18.12.2023

Kanwar Singh @ Kanwar Chand and Ors.

....Appellants

Versus

Rakesh Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Varun Sharma, Advocate
for the appellants.

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Mr. Aditya Jain and
Mr. Pankaj Gautam, Advocates
for the Caveator/respondent.

AMARJOT BHATTI, J.

1. The appellants-Kanwar Singh @ Kanwar Chand and Ors. have filed regular second appeal against impugned judgment and decree dated 19.10.2022 passed by Additional District Judge, Rewari vide which appeal preferred against judgment and decree dated 09.10.2018 passed by learned Civil Judge (Junior Division), Rewari, was dismissed.

2. As per the facts of the case, the respondent/plaintiff-Rakesh Sharma filed suit for recovery of Rs.56,16,013/- from the defendants i.e. Rs.12,11,000/- each from defendants No.1 and 2 i.e. Kanwar Singh @ Kanwar Chand and Ami Lal @ Ami Ram and Rs.10,64,671/- each from defendants No.3 to 5 i.e. Baniram, Patram and Rajpal. It was alleged that

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the defendants were owners in possession of land measuring 37 Kanal 2 Marla situated at Village Ladhuwas Gurjar, Tehsil and District Rewari bearing khasra numbers as detailed in Jamabandi for the year 2013-14. The said defendants entered into an agreement to sell regarding the agricultural land as per their shares on 18.11.2011 for a sale consideration of Rs.1,21,10,000/- per acre. They had received Rs.56,16,013/- as earnest money from the plaintiff. The date fixed for the execution and registration of sale deed was on or before 31.01.2012. The plaintiff was ready and willing to perform his part of agreement to sell. He remained present in the office of Sub Registrar, Rewari on 31.01.2012 from 9:00 AM to 5:00 PM but the defendants or their authorized person did not come present to perform their part of agreement to sell. Thereafter, the plaintiff had met the defendants personally several times to perform their part of agreement to sell but they put off the matter on one pretext or the other. However, now the suit property has come under the town planning area and master plan. There is a breach of agreement to sell on the part of defendants. Therefore, he is entitled to recover his earnest money. On their refusal to return the earnest money, the present suit was filed on 31.01.2015. In fact the plaintiff had suffered heart attack and he was admitted in the hospital till 05.02.2015 and ultimately, the suit was filed with a delay of about 7 days regarding which he had filed separate application.

3. Notice of the suit was given to the defendants. They appeared and filed their written statement raising preliminary objections regarding maintainability, concealment of facts, locus-standi and cause of action to file the present suit. They also raised objection regarding the suit barred

by limitation. On merits, no specific reply was given to paras No.1 and 2 of the plaint and it was alleged that it is a matter of record and needs no reply. It was further claimed that the plaintiff be put to strict proof of the contents mentioned in para No.2 of the plaint. It was further alleged that the plaintiff did not come to the office of Sub Registrar, Rewari on the target date for the execution and registration of the sale deed. In fact he was not having sufficient means for the execution and registration of the sale deed. The defendants served a legal notice to the plaintiff terminating the agreement to sell in question. The defendants had appeared on 31.01.2012 before the Sub Registrar, Rewari but the plaintiff did not turn up. The sending of legal notice on 31.01.2012 to the defendants to execute the sale deed was also denied. By taking this stand the defendants prayed that the suit filed by the plaintiff may be dismissed with cost.

4. In replication, the averments in the written statement were denied and those of plaint were reiterated. From the pleadings of the parties, following issues were framed on 12.08.2015:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.56,16,013/- with interest as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPP.
3. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD.
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
5. Whether the suit of the plaintiff is barred by law of limitation? OPD.
6. Relief.

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5. In order to prove the suit, the plaintiff examined himself as PW2. He also examined Vivek as PW-1, Om Parkash Yadav as PW-3, Rattan Lal Bhargav, Stamp Vendor as PW-4, Kuldeep, Registration Clerk, Sub Registrar Office, Rewari as PW-5, Girdhari Lal Sharma, Nanital Bank Limited, New Delhi as PW-6, Vikas Yadav as PW-7, Deshraj, Assistant Draftsman, Office of Town Planner, Rewari as PW-8. Thereafter, learned counsel for the plaintiff tendered in evidence Exhibit P-1 to Exhibit P-4 and Mark A to Mark-M and closed the evidence.

6. To rebut the evidence of the plaintiff, defendants examined Baniram as DW-1, Suresh Yadav, Stamp Vendor, Rewari as DW-2, ASI Suresh Kumar, Complaint Clerk, SP Office, Rewari as DW-3, Suresh Kumar, Registration Clerk, Sub Registrar, Rewari as DW-4 and Santosh Kumar, Clerk as DW-5 and thereafter, the evidence of defendatns was closed by order vide order dated 03.03.2017.

7. After hearing the arguments advanced by learned counsel for the parties, the suit filed by Rakesh Sharma was decreed vide judgment and decree dated 09.10.2018 passed by the then Civil Judge (Junior Division), Rewari. Feeling aggrieved of the aforesaid judgment and decree, Civil Appeal was filed against respondents/defendants, which was also dismissed vide judgment and decree dated 19.10.2022. Feeling aggrieved of this judgment and decree, the appellants filed present regular second appeal.

8. Learned counsel for the appellants/defendants argued that the impugned judgment and decree dated 19.10.2022 passed by learned Additional District Judge, Rewari dismissing the appeal preferred by them

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against the judgment and decree dated 09.10.2018 passed in favour of the plaintiff by the then learned Civil Judge (Junior Division), Rewari, is without any justification. The evidence on record and the documents proved on file were not rightly considered. The plaintiff-Rakesh Sharma had filed simple suit for recovery of earnest money on the basis of agreement to sell dated 18.11.2011 without seeking any relief for specific performance of said agreement to sell. In fact the respondent/plaintiff was never ready and willing to perform his part of agreement to sell. He was not having balance sale consideration for the execution and registration of sale deed. He never appeared in the office of Sub Registrar, Rewari on the target date. It was the appellant/defendants who got their presence marked by way of affidavit duly attested by the Executive Magistrate which is Exhibit DW-1/B. The appellants/defendants had served legal notice dated 02.02.2012 to the respondent/plaintiff by calling upon him to get the sale deed executed and registered on 08.02.2012 in the office of Sub Registrar, Rewari. The copy of said legal notice is Exhibit DW-1/C and the postal receipt is Exhibit DW-1/D. Therefore, it is wrongly claimed by the respondent/plaintiff that he was ready and willing to perform his part of agreement to sell. The suit filed by the respondent/plaintiff seeking recovery of earnest money is also barred by limitation. As per his version, he claimed that he was admitted in the hospital from 28.01.2015 till 05.02.2015. In fact the suit was required to be filed within three years from the date when the cause of action arose to the plaintiff after the target date i.e. 31.01.2012. The respondent/plaintiff was fully aware of the nature of suit property. He had wrongly claimed that the property had

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come under R Zone ,Green Belt and National Highway and for that reason he was not seeking the specific relief of agreement to sell. The said plea taken by the respondent/plaintiff is not available to him as nothing was concealed from him and knowing fully well he had agreed to purchase the was property vide agreement to sell dated 18.11.2011 Exhibit PW1/B. The aforesaid facts have not been considered by the Courts below and suit for recovery along with interest has been wrongly decreed in favour of the respondent/plaintiff. It is submitted that by accepting the present appeal, the suit filed by the respondent/plaintiff seeking recovery may kindly be dismissed.

9. On the other hand, learned counsel for the respondent/plaintiff argued that the findings given by the Courts below and the judgment and decree passed by the learned trial Court and confirmed by the First Appellate Court do not require any interference. The execution of agreement to sell dated 18.11.2011 Exhibit PW-1/B and receipt of earnest money of Rs.56,16,013/- is not disputed by the appellants/defendants. DW-1 Baniram during his cross examination has admitted the aforesaid facts. The money was received as per their shares in cash as well as by way of cheques which were duly encashed by them. The learned counsel for the respondent/plaintiff referred to the statement of Desraj, Assistant Draftsman office of Town Planner, Rewari PW-8 who confirmed that the suit land situated in village Ladhuwas Gurjar, Tehsil and District Rewari has come under the master plan since 13.12.2006. Therefore, the land is covered under R Zone, Green Belt and National Highway. Therefore, the agreement to sell dated 18.11.2011 Exhibit PW-1/B cannot be executed by

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way of registration of sale deed. This fact was concealed by the appellants/defendants and for this reason the respondent/plaintiff had filed suit for recovery of earnest money handed over to the appellants/defendants on the basis of said agreement to sell dated 18.11.2011. The aforesaid facts were rightly considered and appreciated by the Courts below and his suit filed for recovery was rightly decreed.

10. I have considered the arguments advanced by learned counsel for both the parties and have also gone through the evidence on record carefully. Some of the facts are admitted by both the parties. Admittedly, the appellants/defendants are owners in possession of land measuring 37 Kanals 2 Marlas situated in Village Ladhuwas Gurjar, Tehsil and District Rewari. Copy of jamabandi for the year 2013-14 is Exhibit P-4. It is further not disputed by the appellants/defendants that they entered into an agreement to sell dated 18.11.2011 Exhibit PW1/B regarding sale of aforesaid land in favour of the respondent/plaintiff and in pursuance of the same they had agreed to sell the land @ Rs.1,21,10,000/- per acre. They had received earnest money of Rs.56,16,013/- by way of cash and cheques which are duly incorporated in para No.1 of the said agreement to sell dated 18.11.2011. In order to prove the execution of aforesaid agreement to sell, the respondent/plaintiff Rakesh Sharma himself stepped into the witness box as PW-2 to confirm the aforesaid facts and settled terms and conditions agreed between the two parties. The respondent/plaintiff further examined Vivek PW-1 the marginal witness who confirmed the scribbling of aforesaid agreement to sell. Rattan Lal Bhargav, Stamp Vendor also stepped into the witness box as PW-4 to confirm the sale of stamp papers

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by him on which the said agreement to sell was scribed. Baniram one of the appellant-defendant who stepped into the witness box as DW-1 also confirmed the due execution of agreement to dated 18.11.2011 as well as receipt of aforesaid earnest money as per their shares. It is further not disputed that the date fixed for the execution and registration of sale deed was on or before 31.01.2012. The respondent/plaintiff as well as the appellants/defendants both of them claimed that they were present in the office of Sub Registrar, Rewari to perform their part of agreement to sell, as per settled terms and conditions of aforesaid agreement to sell. The affidavit got prepared by the respondent/plaintiff to mark his presence is Exhibit PW-2/B which is confirmed by examining Kuldeep, Registration Clerk in the office of of Sub Registrar, Rewari as PW-5. On the other hand, the appellants/defendants examined Suresh Kumar, Registration Clerk DW-4 to prove their affidavit dated 31.01.2012 Exhibit DW-1/B attested by the Executive Magistrate, Rewari. However, it has come in the cross examination of Suresh Kumar, Registration Clerk DW-4 that he was not posted at that place when the said affidavit was got attested. The respondent/plaintiff claimed that initially, they were ready and willing to perform their part of agreement to sell but later on they came to know that the suit property had come under the master plan of Town Planner, Rewari and for this reason, they had filed the present suit for recovery of earnest money along with interest. It is the case of appellants/defendants that even after the target date, they served notice dated 02.02.2012 calling upon the respondent/plaintiff to perform his part of agreement to sell on 08.02.2012. The copy of said notice is Exhibit DW-1/C and postal receipt is Exhibit

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DW-1/D. As per the case of appellants/defendants, there was breach on the part of respondent/plaintiff, therefore, he was not entitled to recover the earnest money.

In the light of aforesaid factual position, I have examined the documentary evidence and the oral evidence led by the parties as referred above. The execution of agreement to sell dated 18.11.2011 Exhibit PW-1/B, the receipt of earnest money of Rs.56,16,013/- as well as its terms and conditions enshrined therein are not disputed. I have gone through the contents of agreement to sell dated 18.11.2011 Exhibit PW-1/B. In the aforesaid agreement to sell it is specifically mentioned that 'on the land agreed to the sold no loan has been raised from a Bank, Government Agency or Private Agency. There is no litigation going on with regard to the land in question nor it has been attached or auctioned. The land in question is not subject to any sale, gift deed, lease deed etc. It was specifically mentioned that there is no restriction on the land owners to sell the property. It was further clarified that neither the land has been acquired nor any such notice has been received by them. The vendors further clarified that they have not entered into an agreement to sell the land with any other person. They were selling the land with their free consent as they were in need of money for their future plans'. Contrary to the aforesaid terms and conditions specifically mentioned in the agreement to sell, the statement of Desraj, Assistant Draftsman office of Town Planner, Rewari examined as PW-8 who categorically stated that the land in question has been covered under master plan since 13.12.2006 vide letter DRG No. D.T.P.(RE)460 of 2006 dated 13.12.2006. Thus the land is

covered under R Zone, Green Belt and National Highway. It cannot be believed that the appellants/defendants were not aware of this fact. In fact they agreed to sell their land by concealing this material fact, as a result of which the aforesaid agreement to sell dated 18.11.2011 Exhibit PW1/B has become un-executable. Admittedly, they have received huge amount of earnest money of Rs.56,16,013/- as per the share detailed in the agreement to sell dated 18.11.2011. Considering their conduct, they cannot be permitted to forfeit the aforesaid amount received by him. The agreement to sell dated 18.11.2011 has been frustrated because of the conduct of appellant/defendants. The respondent/plaintiff rightly filed the suit seeking recovery of earnest money with interest.

11. The appellants/defendants have also taken the objection that the suit filed by the plaintiff was barred by limitation. Admittedly, the agreement to sell is dated 18.11.2011 and the target date fixed for execution and registration of sale deed was up to 31.01.2012. On this date, both the parties claimed their presence in the office of Sub Registrar, Rewari. Thereafter, the appellants/defendants served another notice dated 02.02.2012 calling upon the plaintiff for execution and registration of sale deed on 08.02.2012. The present suit has been filed on 10.02.2015. As per Article 54 of the Limitation Act, 1963 the period of limitation in a suit for specific performance of contract when a specific date is fixed for performance is three years and if no such date is fixed when the plaintiff has notice that performance is refused. Article 55 deals with suit for compensation for the breach of any contract express or implied, that is again the period of limitation is three years when the contract is broken or

when there are successive breaches when the breach is in respect of which the suit is instituted occurs or when it ceases. In the case in hand, considering the target date i.e. 31.01.2012, the plaintiff was required to file suit within three years from the target date. However, the appellants/defendants gave notice dated 02.02.2012 again calling upon the plaintiff to come forward on 08.02.2012 to perform his part of agreement to sell but the fact remains that there is concealment of material fact on the part of appellants/defendants that their land was already under the master plan, Rewari thus covered under R Zone, Green Belt and National Highway. They cannot compel the respondent/plaintiff to purchase the land with said rider. Under these circumstances, the appellants/defendants cannot claim that the suit filed by the plaintiff was barred by limitation, as they are the wrong doers by concealing the aforesaid material fact. However, in the plaint itself it is not specifically mentioned when the respondent/plaintiff came to know about this fact. The facts of the case indicate that till the target date i.e. 31.01.2012, the respondent/plaintiff was ready and willing to perform his part of agreement as he got his presence marked by way of affidavit Exhibit PW-2/B. Therefore, he came to know about this condition subsequently and period of limitation will start from the said contingency. The suit was filed on 10.02.2015. Under these circumstances, it cannot be said that the suit filed by the respondent/plaintiff is barred by limitation.

In view of my above discussion, I do not find any reason to interfere in the concurrent finding of the Courts below vide which the suit filed by the respondent/plaintiff for recovery has been decreed with

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interest. The findings given by the Courts below are fully justified from the evidence and the documents proved on record. With this observation, the judgments passed by the Courts below are accordingly upheld and the appeal preferred by the appellants/defendants is accordingly dismissed.

The records received from the two Courts below be sent back to the concerned quarter.

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

18.12.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No