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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.787 of 2021 (O&M)
RESERVED ON : 07.02.2023
DATE OF DECISION :16.02.2023

Yogesh Kumar …..Appellant

versus

Krishan Kumar Grover and Others .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Mittal, Advocate for the appellant

ALKA SARIN, J.

CM-3869-C-2021

For the reasons stated in the application, the same is allowed and the delay of 81 days in re-filing the appeal is condoned.

RSA No.787 of 2021

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees of both the Courts below dismissing his suit for specific performance.

Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement to sell dated 21.11.2006. It was the case set up by the plaintiff-appellant that defendant-respondent Nos.1 to 4 were owners in possession of the property in dispute being 17 marlas i.e 513 sq. yards in equal shares i.e. 8.5 marlas each. It was alleged that defendant-respondent Nos.1 to 4 agreed to sell the property in dispute at the rate of Rs.2,900/- per sq. yard for a total sale consideration of Rs.14,87,000/- and executed the agreement to sell in favour of the plaintiff-appellant on 21.11.2006. It was further averred that in furtherance of the agreement to sell, a sum of Rs.14,77,000/- was paid as earnest money. It was further agreed that the sale deed was to be executed on or before 25.10.2009 on receiving the balance sale consideration of Rs.10,000/- only. It was averred in the plaint that defendant-respondent No.1 kept on avoiding the execution of the sale deed on one pretext or the other and that it further came to the knowledge of the plaintiff-appellant that defendant-respondent Nos.2 and 3 in collusion with defendant-respondent No.1 executed sale deed No.3570 dated 02.09.2009 qua his share measuring 8.5 marlas and that defendant-respondent Nos.2 and 3 were not *bonafide* purchasers of the share of defendant-respondent No.1 and that the sale deed dated 02.09.2009 was a fake and sham transaction. It was further averred that defendant-respondent No.4 at the instance of the plaintiff-appellant executed a regular sale deed No.5880 dated 24.12.2009 qua his share measuring 8.5 marlas in favour of Smt. Vinod Devi in furtherance of the agreement to sell dated 21.11.2006. It was also averred in the plaint that an FIR had been lodged by defendant-respondent No.4 against defendant-respondent Nos.1 to 3. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract. Defendant-respondent No.1 denied the case of the plaintiff-appellant in toto except for the impugned agreement dated 21.11.2006. It was denied that any amount was paid as earnest money. The stand taken by the defendant-respondent No.1 was that after the execution of the agreement to sell the plaintiff-appellant failed to make the payment and that he was later told that the plaintiff-appellant had changed his mind and had asked him to cancel the agreement to sell. It was thereafter that the property was sold by defendant-respondent No.1 to defendant-respondent Nos.2 and 3 for a total sale consideration of Rs.12,31,500/-. Defendant-respondent Nos.2 and 3 filed their written statements stating therein that they were *bonafide* purchasers of the property in dispute for valuable consideration without notice. Defendant-respondent No.4 admitted the claim of the plaintiff. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is ready and willing to perform the part of agreement to sell dated 21.11.2006? OPP
2. Whether the plaintiff is entitled for possession by way of agreement to sell dated 21.11.2006 on the grounds mentioned in the plaint? OPP
3. If issue no.1 & 2 are proved then as to whether the plaintiff is entitled for decree for possession and specific performance of agreement to sell dated 21.11.2006 on the grounds mentioned in the plaint? OPP

4. Whether the suit is plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff is stopped by his own act and conduct to file the present suit? OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Whether the suit is hopelessly time barred? OPD
8. Whether the civil court has no jurisdiction to try the present suit? OPD
9. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
10. Whether the defendants are bona-fide purchaser for valuable sale consideration without notice? OPD
11. Relief.

The Trial Court held that the agreement to sell stood proved, however, the payment of the earnest money was not proved. The suit of the plaintiff-appellant was accordingly dismissed vide judgment and decree dated 06.08.2016. Aggrieved by the said judgment and decree, an appeal was preferred which was also dismissed vide judgment and decree dated 09.09.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the agreement to sell was admitted by the defendant-respondent No.1 and that even the payment of the earnest money of Rs.14,77,000/- stood proved and as such his suit ought to have been decreed. According to counsel, the

Courts below have not appreciated the evidence on the record and have illegally dismissed the suit.

Heard.

In the present case the defendant-respondent No.1 has specifically denied ever having received the earnest money. There is not an iota of evidence on the record to show that the plaintiff-appellant had the funds to make the said payment of Rs.14,77,000/- as alleged. Though an argument was raised by the counsel for the plaintiff-appellant that some property had been sold and it is from the proceeds of the said sale that the payment was made, however, there is no evidence except for the bald statement of the plaintiff-appellant. It has further come in evidence that on the day the agreement to sell was entered in the register of the stamp vendor Sunil Gupta, who stepped into the witness box as PW4, yet another entry at serial No.794 was made qua another agreement to sell qua which payment of Rs.12,80,000/- was shown to have been paid to Sunil by the plaintiff-appellant. The plaintiff-appellant, therefore, would have on the date of the agreement to sell i.e. 21.11.2006 allegedly paid Rs.14,77,000/- to the defendant-respondents and Rs.12,80,000/- to another vendor. No evidence has come on the record to show that the plaintiff-appellant had the source to pay the said huge amounts. Further still, it does not stand to reason as to why a person would enter into an agreement to sell on 21.11.2006, pay an amount of Rs.14,77,000/- and for the balance sale consideration of Rs.10,000/- only, fix the target date for 25.10.2009 i.e. after almost three years. The counsel for the plaintiff-appellant has not been able to convince this Court or point to any evidence on the record regarding the payment of earnest money to the defendant-respondents. Pure findings of fact have been concurrently recorded by both the Courts below warranting no interference by this Court. No question of law much less any substantial question of law arises in the present case.

The present appeal is wholly devoid of any merit and is accordingly dismissed. Pending application, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

16.02.2023
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NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO