

134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-96-2024 (O&M)
Date of decision :11.01.2024

Malwinder Kaur and another

...Appellants

Vs.

Jaswinder Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Kumar, Advocate
for the appellants.

Mr. B.S. Bhalla, Advocate
for the respondent.

ANIL KSHETARPAL, J.

1. In this regular second appeal, the correctness of concurrent findings of the fact arrived at by the Courts below is assailed by the defendants. In order to comprehend the issues involved in the present case, the relevant facts, in this regard are required to be noticed. The respondent (plaintiff) before the trial Court filed a suit for possession of 645 square yards of plot and also prayed for grant of mesne profits for use and occupation of the suit property @ Rs.50,000/- per month. The respondent has claimed that she is owner of the property. She entered into agreement to sell with the defendants on 11.11.2013. It was agreed that amount of Rs.5 lacs was received as the earnest money out of total sale consideration of Rs. 42 lacs. As per the agreement to sell, amount of Rs. 17 lacs was to be paid on 10.06.2014, whereas, the remaining amount was to be paid on or before 30.11.2014. At the time of agreement to sell, the possession was delivered. However, the defendants have not honoured their

part of the agreement. Defendants while contesting the suit claimed that they are in possession of the property as tenants @ Rs. 500/- per month. Both the Courts on appreciation of evidence have concurrently found that the defendants miserably failed to prove that they were in possession of the property as tenants.

2. Learned counsel representing the appellants contends that without seeking the relief of decree of declaration that the agreement to sell has come to an end, the suit for possession was not maintainable.

3. This Court has considered the submissions, although this point was never agitated before the Courts below, however, learned counsel representing the appellant has been permitted to address the arguments.

4. As per Section 54 of the Transfer of Property Act, 1882 the agreement to sell does not, of itself, create any interest in or charge on such property. The agreement to sell is only a contract between the parties to execute the sale deed on a future date. The transaction is complete once the sale deed is executed and registered, if it is with respect to the immovable property. The agreement to sell is only one step towards the completion of the sale deed. However, once it is proved that the intended purchasers have failed to perform their part of contract, the agreement to sell ceases to exist or become unenforceable.

5. In such circumstances, separate suit for declaration to the effect that agreement to sell has come to an end, is not necessary.

6. Moreover, in this case, the plaintiff has sought for the relief of possession, which is a larger relief. The decree of declaration is implicit therein.

7. In view of the aforesaid facts, no ground for interference is made out.
8. Hence, dismissed.

11.01.2024

neeraj

Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes
Yes

No
No