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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2065-1990 (O&M)
Date of decision: 23.07.2024

Jodh Singh ...Appellant

Versus

Ajit Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. M.S. Virk, Advocate for the appellant.

Mr. J.S. Santwal, Advocate for the respondent.

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VIKAS BAHL, J. (ORAL)

1. The defendant in a suit for specific performance of agreement to sell dated 29.06.1982 instituted by the respondent (plaintiff) is in second appeal. Challenge in the present appeal is to the judgment dated 07.08.1990 passed by the First Appellate Court, vide which a limited/alternate relief of refund of Rs.35,000/- along with interest has been granted to the respondent (plaintiff).

2. The respondent-plaintiff (hereinafter to be referred as the plaintiff) had filed a suit for possession by way of specific performance of agreement to sell dated 29.06.1982, executed by the defendant-present appellant (hereinafter to be referred as the defendant) in favour of the plaintiff with respect to land measuring 46 kanals 15 marlas being ½ share of total land measuring 93 kanals 11 marlas comprised in Square No.424, Killa No.19 to 25 (56-0), Rectangle No.423, Killa No.21(7-0), 22(6-11), Rectangle No.462, Killa No.1, 2, 3 (24-0) situated in Village Rania, Tehsil and District Sirsa vide jamabandi for the year 1977-78. It was the case of

the plaintiff in the plaint that the defendant had agreed to sell the land measuring 46 kanals 15 marlas (being suit land) vide agreement to sell dated 29.06.1982 for a total sale consideration of Rs.70,000/- and had received an amount of Rs.35,000/- as earnest money and the sale deed was to be executed on the payment of the remaining amount on 13.12.1982. It was further the case of the plaintiff that on 13.12.1982, the date for registration of the sale deed was extended on 21.12.1982 with the consent of both the parties and endorsement to the said effect was also made. It was averred that on 21.12.1982, the plaintiff was ready and willing to perform his part of the agreement and had gone to the office of the Sub-Registrar along with the remaining sale consideration and expenses towards the stamp, registration charges etc. but the defendant did not turn up on the said date as his intention had became mala fide and that thereafter, the plaintiff had given several registered notices and since the defendant had backtracked from the said agreement, the plaintiff had filed a suit for specific performance. A perusal of the plaint would show that apart from the prayer/relief of specific performance, it was also prayed that the plaintiff be granted any other relief, in addition to it or in the alternative, which the Court may deem fit and to which the plaintiff is found entitled by the Court.

3. In the written statement, plea taken by the defendant was that he and his brother had purchased land measuring 214 kanals 5 marlas from various persons on 20.08.1979 and on account of financial tightness, had taken some money from the plaintiff and his brother in the year 1979 regarding which several documents were executed as security documents. It was further the case of the defendant that on 29.06.1982, a sum of

Rs.30,000/- was outstanding against the defendant and that the said amount had been paid by the defendant to the plaintiff and only an amount with respect to interest was outstanding against the defendant which the defendant was ready and willing to pay and it was also averred that the rate of interest was settled at 2% per month. It was admitted in the written statement that the defendant did not take any receipts regarding the said payment.

4. Learned trial Court, vide judgment and decree dated 30.05.1989, had observed in para 7 of the judgment that the execution of the agreement to sell was not disputed and also it was not disputed that the date for execution of the agreement to sell was extended from 13.12.1982 to 21.12.1982 but however dismissed the suit of the plaintiff by observing that the agreement to sell Ex.P1 was executed only as a collateral security and there was no intention of the parties to sell the property. The finding of the trial Court on the aspect of the agreement to sell being not disputed has been mentioned in para 7 of the judgment and the relevant portion of the said finding is reproduced hereinbelow:-

> *"7. <u>Issue No.1, 4 & 7:-</u>*
>
> *All these issue are interconnected, so are being taken up together.*
>
> ***The execution of agreement to sell Ex.P1 is not disputed. It is also not dispute that its date was extended from 13.12.1982 to 21.12.1982 vide endoresement Ex.P1/A.*** *However, the plaintiff has still proved it by the evidence of petition writer Narain Dass PW1, Sukhdev Singh PW4, Karnail Singh PW5 and hand-writting and finger print expert Sh. Yashpal Chand Jain PW7, besides his own testimoney as*

PW2. The agreement to sell was attested by Numberdar Gian Singh and one Harbans Singh son of Sawaran Singh. Both are no more in this world so, the plaintiff examined Karnail Singh PW5 brother's son of Gian Singh who has identified his signatures upon agreement Ex.P1. The expert had compared the signatures of defendant Jodh Singh upon Ex.P1 with his specimen signatures Ex.PW7/5 obtained in Court. He gave his opinion Ex. PW7/x in affirmative based upon enlarged positive photographs. Ex. PW7/3 to Ex. PW7/11 with respective negatives Ex. PW7/12 to Ex.PW7/20.)"

5. The plaintiff filed an appeal against the said judgment. At the stage of appeal, the plaintiff, as a matter of precaution, sought an amendment in the plaint and specifically claimed alternative relief of return of advance price of Rs.35,000/- paid to the defendant along with interest thereon at the rate of 2% per month from the date of payment till the date of realisation. The said amendment was allowed and as has been recorded in para 6 of the judgment of the First Appellate Court, amended written statement was also filed by the defendant and on the basis of the amended pleadings, two additional issues were framed and report was sought from the trial Court. First additional issue was with respect to the fact as to whether an amount of Rs.35,000/- or any other amount under the agreement for sale as alleged was recoverable from the defendant. Second additional issue was with respect to the fact as to whether the relief so claimed was barred by limitation. It would be relevant to note that it has not been disputed that the order allowing amendment has attained finality.

6. The trial Court vide its report dated 15.03.1990 held issue No.2 which was with respect to limitation, in favour of the plaintiff and with

respect to issue No.1, it was observed that the plaintiff was entitled to an amount of Rs.30,000/- from the defendant in pursuance of an agreement to sell dated 29.06.1982. The First Appellate Court, after receipt of the said report, partly allowed the appeal of the appellant-plaintiff vide judgment and decree dated 07.08.1990 and observed that the plaintiff was entitled to an amount of Rs.35,000/- with interest at the rate of 2% per month. Paragraphs 13 and 14 of the judgment passed by the First Appellate Court granting the said relief are reproduced hereinbelow:-

> ***"13. The next significant aspect of the matter is that the learned trial court, not only denied the specific performance of the contract but also did not allow the refund of the amount which had admittedly been due from the defendant,*** *Shri R.S.Virk, in his report concluded the only a sum of Rs.30,000/- was payable by the defendant to the plaintiff which was the original amount by which sale consideration had fallen short.,* ***In this connection, it is to be noticed that the defendant had admitted that he had executed several agreements in favour of the plaintiff all by way of collateral security and were not intended to be acted upon. It is also not disputed that the defendant had acknowledged at Ex.P1/A in his own hand that he had received a consideration of Rs.35,000/-. It is also not disputed before me that the original agreement between the parties indicated that the amount of Rs.35,000/- would be paid by the defendant and that he would also be liable to pay interest @ Rs.2% per month on his failure to execute the sale deed on the date fixed. This fact has been admitted by the defendant in his own statement.*** *In those circumstances, even if it be assumed that the sum of Rs.35,000/- constituted the amount of principle plus interest from the defendant on the date of execution of the agreement,*

said amount cannot be denied to the plaintiff.

14. The defendant, no doubt, alleged that he had made payment of the amount due from him on thed ates mentioned in the amended written statement, he has not brought any documentary evidence to establish the payment of the said amount. ***The vague assertion of the defendant himself that he had actually made payment without substantial proof thereof would be wholly meaningless.*** *It was, at best, an admission of the defendant in his own favour which cannot be relied upon to conclude that the amount had actually been paid by him to the plaintiff. The defendant also leads evidence of DW7 Balak Singh to state that the defendant had borrowed certain money from him; that does not i facts prove that the amount so borrowed by the defendant from this witness had actually been paid to the plaintiff. The statement of DW8 Amarjit Singh showing that Jodh Singh had made payment of Rs.7000/- to the plaintiff about 7 years ago was again vague and indefinite.* ***it is common knowledge that if the defendant had actually made any payment, he would have obtained receipt or acknowledgement for the same. In those circumstances, inevitable conclusion is that the defendant had not made payment of any amount to the plaintiff and that the amount of Rs.35,000/- was due to the plaintiff as acknowledged by the former while executing the agreement. It is also admitted by the defendant that he had agreed to pay interest @ 2% per mensem.*** *In the peculiar circumstances, I find that the observations of Sh. Virk on that aspect of the matter showing that the plaintiff was entitled to recover only Rs.30,000/- was wholly erroneous.* ***The plaintiff is clearly entitled to the amount of Rs. 35,000/- with interest at the rate of Rs.2% per month till the institution of the suit with costs. If the amount is paid within a period of two months, the plaintiff will be allowed interest at the rate of Rs.6% per annum on the***

principle amount of Rs. 35,000/- only from the date of institution of the suit till date of actual payment. *If, however, the amount is not paid within two months, the plaintiff shall be entitled to interest at the agreed rate till the date of realisation.*
The appeal is accordingly allowed with costs.
Announced in open court.
Dated; 7.8.1990."

7. Aggrieved against the abovesaid relief granted by the First Appellate Court, the defendant has filed the present appeal. On 07.12.1990, a Coordinate Bench of this Court had noticed the fact that decretal amount had been deposited by the appellant/defendant and the respondent was directed to withdraw the same on furnishing security of immovable property to the satisfaction of the Executing Court. Order dated 07.12.1990 is reproduced hereinbelow:-

"Present:- Mr. S.M. Sharma, Advocate, for the appellant.
Mr. Sukhdev Singh, Advocate, for the respondent.
Notice.
Learned counsel for the appellant states at the bar that the decretal amount has been deposited by his client. The respondent is directed to withdraw the same on furnishing security of immoveable property to the satisfaction of the Executing Court. The security will be accepted after notice to the appellant.
December 7, 1990"

8. This Court has been informed that the said amount has been deposited and has been withdrawn by the respondent/plaintiff.

9. Learned counsel for the appellant has challenged the judgment of the First Appellate Court granting the above limited relief to the plaintiff.

It is argued that the case set up by the plaintiff was that there was an agreement to sell dated 29.06.1982 in his favour and once both the Courts had come to the conclusion that the version of the plaintiff was not believable and it was found that the said agreement to sell was in fact only a collateral security document executed for the purpose of securing the amount taken by the defendant on account of his financial need, then no relief should have been granted to the plaintiff as he had not come to the Court with clean hands. It is next submitted that as has been detailed in the written statement, the defendant had already repaid the money and only a small amount on account of interest was left and thus, the decree of the amount of Rs.35,000/- along with interest is against law and deserves to be set aside.

10. On the other hand, learned counsel appearing on behalf of the respondent-plaintiff has submitted that the judgment of the First Appellate Court is in accordance with law and does not need to be interfered with. It is submitted that a perusal of the agreement to sell Ex.P1 itself would show that an amount of Rs.35,000/- had been given to the defendant and at any rate, the said amount should be returned to the plaintiff. It is submitted that in para 2 of the written statement, even the rate of interest to the extent of Rs.2 per cent per month was also admitted by the defendant and once the Court had come to the conclusion that the plea raised by the defendant that he had returned the money was not proved then the limited relief granted to the plaintiff was in accordance with law and does not call for any interference.

11. This Court has heard learned counsel for the parties and has

perused the paper book.

12. The defendant in his written statement has admitted the fact that on account of financial "tightness", he had taken some money from the plaintiff and had also executed various documents and on 29.06.1982, a sum of Rs.30,000/- was outstanding against the defendant and the plaintiff had wrongly mentioned the amount in the document as Rs.35,000/- instead of Rs.30,000/-. It is further admitted in the said written statement that the rate of interest was settled at Rs.2 per cent per month. It was the case of the defendant that he had repaid the said money although there was no receipt regarding the same. Relevant portion of para 2 of the written statement is reproduced hereinbelow:-

> *"….As a matter of fact, the defendant and his brother namely Sukhvinder Singh and one Avtar Singh son of Shri Harbans Singh, Gurbachan Singh son of Karam Singh, purchased land measuring 214 kanals 5 marlas from DhayanSingh, Ranjit Singh, and the defendant Ajit Singh sons of Shri Surain Singh, on 20-8-1979 for a consideration of Rs. 282500/- and on the said date,* ***the defendant due to his financial tightness had taken some money from the plaintiff*** *and his brother and aforesaid persons and the defendant paid certain amount and then the defendant in the year 1980 also was asked to execute a fresh security document because the defendant could not pay the whole amount, which was taken by the defendant, in the year 1979. On 22-6-1981, another security document was procured by the plaintiff from the defendant, because the whole amount was not paid by the defendant, but certain amount was paid and then a fresh security document dated 29-6-1982 was procured by the plaintiff, for the same purpose. In fact, the plaintiff had procured the said documents only for the security*

of the amount, and not for any such agreement for sale of the suit land, from the defendant. ***On 29-6-1982, only a sum of Rs.30000/- was outstanding against the defendant, but the plaintiff had got inserted a sum of Rs.35000/-in place of Rs.30000/- in that document****. The aforesaid sum of Rs.30000/- has been paid back by the defendant to the plaintiff on various dates, and the defendant has also paid a sum of Rs.3000/- as interest towards the aforesaid original amount,* ***and now the remaining amount towards interest is outstanding against the defendant, which the defendant is ready and willing to pay to the plaintiff. The rate of interest was settled as Rs.2 percent per month…...****"*

13. The trial Court, in para 7 of the judgment (which para has been reproduced hereinabove) had come to the conclusion that the execution of the agreement to sell Ex.P1 was not disputed and even extension from 13.12.1982 to 21.12.1982 vide endorsement Ex.P1/A was also not disputed. The First Appellate Court, in paras 13 and 14 of the judgment (which have been reproduced hereinabove), had observed that the defendant had also admitted the execution of several documents by way of collateral security and that it was not disputed by the defendant that he had executed Ex.P1/A in his own hand and that he had received a consideration of Rs.35,000/- and that even original agreement between the parties mentioned the said amount of Rs.35,000/- which he would be liable to pay along with interest at the rate of Rs.2% per month on his failure to execute the sale deed on the date fixed. It was further observed that there was no documentary evidence to establish that the said amount which was due upon the defendant had been repaid by him.

14. Learned counsel for the appellant has not been able to show that there was any document much less receipt with respect to repayment of the said amount or any other document which might have been misread or misconstrued by the First Appellate Court in granting the abovesaid limited relief to the plaintiff.

15. Once the factum of amount due from the defendant was proved then even in the absence of grant of specific performance to the plaintiff, it was incumbent upon the Court to return the said money which was due along with interest as agreed upon, failing which it would have amounted to undue enrichment of the defendant. In the said circumstances, limited relief has been rightly granted to the plaintiff by the First Appellate Court. Moreover, in the present case, as is apparent from its order dated 07.12.1990 passed by the Coordinate Bench of this Court, the said amount has already been deposited by the appellant-defendant and has been withdrawn by the respondent-plaintiff.

16. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the judgment of the First Appellate Court dated 07.08.1990 is in accordance with law and the same does not call for any interference and the present Regular Second Appeal being meritless, deserves to be dismissed and is accordingly, dismissed.

17. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

23.07.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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