

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-413-1993 (O&M)
Reserved on:30.04.2024
Pronounced on:06.05.2024
2024:PHHC:062612

RATTAN SINGH

. . . . APPELLANT

Vs.

SAMPURAN SINGH AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. P.S. Goraya, Advocate, for the appellant.

Mr. Harjot Singh Bedi, Advocate, for the respondents.

DEEPAK GUPTA, J.

This is plaintiff's Regular Second Appeal against concurrent findings of the Courts below.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred to as per their status before the ld. Trial Court.

3.1 It emerges that defendant No.1-Sampuran Singh (*respondent N:1 herein*) was the owner of the suit land, which he agreed to sell to the plaintiff-Rattan Singh (*now appellant*) vide an agreement dated 30.10.1984 (Ex.P1) for consideration of ₹23,800/-. An amount of ₹1000/- was paid as earnest money. Remaining amount was agreed to be paid at the time of execution of the sale deed. Default clauses were stipulated in the agreement to the effect that in case defendant No.1-Sampuran Singh failed to perform his part of agreement, he will have to refund the earnest money along with damages of ₹1000/-.

3.2 Plaintiff brought the suit by contending that he had always

been ready and willing to perform his part of contract, but defendant No.1 failed to turn up on the target date. It was further alleged that defendants No.2 to 4 (*respondents No.2 to 4 herein*) had started claiming to have purchased the suit land from defendant No.1. Plaintiff alleged that if any such sale deed has been executed, that was null and void and not binding upon him. He prayed for decree of specific performance and in the alternative, sought recovery of ₹2000/-.

4. Defendant No.1 took the stand that he never executed any agreement in favour of plaintiff; rather, he had entered into an agreement to sell dated 21.09.1984 (Ex.D2) in favour of defendants No.2 to 4 to sell the land for consideration of ₹30,000/-. He had received ₹5000/- as earnest money and that after receiving the balance amount, he had executed the sale deed dated 23.11.1984 (Ex.D1) in favour of said defendants No.2 to 4, to whom possession was also delivered and so, there was no question of any specific performance. Defendants No.2 to 4 took the same stand.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found that defendant No.1 had of course executed an agreement dated 30.11.1984 (Ex.P1) in favour of the plaintiff and had received ₹1000/- as earnest money. At the same time, it was found that defendant No.1 had earlier executed an agreement dated 21.09.1984 (Ex.D2) in favour of defendants No.2 to 4 and pursuant thereto, he had already executed sale deed dated 23.11.1984 (Ex.D1) in their favour. Consequent to these findings, suit for specific performance was dismissed, but decree for recovery of ₹2000/- with cost was passed in favour of the plaintiff vide judgment dated 25.05.1990.

6. The First Appellate Court vide its judgment and decree dated 30.09.1992 endorsed the aforesaid findings and dismissed the appeal.

7. The only contention raised before this Court by ld. counsel for the appellant-plaintiff is that agreement dated 21.09.1984 (Ex.D2) had been manipulated by the defendants in collusion with each other, in order to defeat the rights of the plaintiff, which had accrued by way of agreement dated 30.10.1984 (Ex.P1). Ld. counsel contends that as per the testimony of DW4-Saudagar Singh, one of the attesting witnesses to the agreement (Ex.D2) as well as sale deed (Ex.D1), the agreement was executed 2-4 days prior to the execution of the sale deed (Ex.D1), which indicates that an ante-dated agreement (Ex.D2) was manipulated to defeat the rights of the plaintiff-appellant.

8. The aforesaid contention as raised by counsel for the appellant has been duly discussed by ld. trial Court as well as the First Appellate Court and the same has been rejected and rightly so. It has come in the testimony of DW3-Gurdeep, the document writer, that agreement (Ex.D2) was executed on 21.09.1984. This witness produced the document register maintained by him and proved the entry at Sr. No.7 of his register made on 21.09.1984, which clinches the issue, proving beyond doubt that agreement (Ex.D2) had been executed on 21.09.1984 and not just prior to the sale deed dated 23.11.1984 (Ex.D1), as is contended by the appellant-plaintiff.

9. The aforesaid concurrent finding of fact recorded by the Courts below is based upon proper appreciation of evidence. This Court does not find any illegality or perversity in the said finding so as to interfere in the same.

10. Since sale deed dated 23.11.1984 (Ex.D1) has already been executed in favour of defendants No.2 to 4 by defendant No.1 pursuant to the agreement dated 21.09.1984 (Ex.D2), so the Courts below have rightly held that plaintiff was not entitled for decree of specific performance of the agreement dated 30.10.1984.

11. As such, this Court does not find any merit in the present appeal. Same is hereby dismissed with costs.

06.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>