IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IOIN-RSA-2830-2008 and
RSA No.2830 of 2008 (O&M)
Date of Order:02.02.2024

Prabhati .Appellant

Versus

Smt. Chander and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate, for the appellant.
Mr. Keshav Pratap Singh, Advocate, for the respondents.

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiff assails the correctness of the judgment and decree passed by the First Appellate Court while refusing to grant relief of specific performance , however, the suit qua alternative relief for refund of the earnest money along with interest @ 9% per annum from the date of institution of the suit till realization was passed.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The execution of the agreement to sell dated 20.02.2001, with respect to 6 kanals and 17 marlas of agricultural land is admitted. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell on 20.02.2001. It was asserted that the land measuring 6 kanals 17 marlas was agreed to be sold for Rs.2,11,000/-, on 20.02.2001, on receipt of Rs.1,50,000/-. As per the agreement, the sale deed was to be executed and registered on 20.06.2001.

4. It is the case of the plaintiff that the defendants refused to honour the agreement to sell and ultimately a cancellation note was written

on the back page of the first page of the agreement to sell. Thereafter, the defendants told him to wait as he would bring the amount of earnest money, however, he did not turn up. After serving notice to the plaintiff to come for execution of the sale deed on 19.07.2001, the plaintiff filed the suit on 27.08.2001.

5. The defendants while admitting the execution of the agreement to sell, claim that the actual sale consideration was Rs.4,28,000/- and not Rs.2,11,000/-, out of which Rs.2,00,000/- was received at the time of execution of the agreement to sell, however, the plaintiff was not having the balance amount and requested for extension of time but when the defendants refused, he demanded Rs.1,00,000/- more for cancellation of the agreement to sell. Subsequently, the parties entered into a fresh agreement to sell by showing Rs.3,00,000/- as earnest money while adjusting Rs.2,00,000/- which was already paid to the defendants. However, the aforesaid agreement was also not signed because the plaintiff went to his house to bring Rs.1,00,000/- more, but he did not return. The trial court decreed the suit, however, the First Appellate Court held that in the facts and circumstances of the present case, the trial court did not properly exercise its discretion. The court after taking note of endorsement of cancellation on the back side of the first page of the agreement to sell granted decree for recovery of earnest money along with interest.

6. This appeal has come up for hearing after a period of 16 years. The agreement to sell was entered into in the year 2001. Nearly, 23 years have elapsed. It is not in dispute that the agreement to sell was in possession of the plaintiff (the appellant herein). He is required to explain the endorsement which has been typed on the back of the first page, though it is

not signed. It is the case of the plaintiff that at one point of time, the parties agreed to cancel the agreement to sell, however, the defendants failed to refund the earnest money. These events took place in the year 2001. Under Section 20 of the un-amended Specific Relief Act, 1963, the decree for specific performance of the agreement to sell is discretionary. Even if the agreement to sell has been proved, still the court is required to exercise the discretion in accordance with the well settled norms. Such discretion should have sound basis and it should not have caused any unfair advantage to any of the party. Though, the learned counsel representing the appellant is correct in contending that the plaintiff was ready and willing on 20.06.2001, as he was present in the office of the Registrar, however, the court cannot overlook the writing dated 20.06.2001, which was admittedly typed with the consent of the parties. It is the case of the plaintiff that the defendants failed to return the amount and therefore, the endorsement was not signed. Even if the aforesaid assertion of the plaintiff is accepted, still it is evident that the parties did agree for cancellation of the agreement to sell.

7. Keeping in view the aforesaid facts, it is not found appropriate to grant relief of specific performance of the agreement to sell, particularly when 23 years have elapsed from the date the agreement to sell was executed.

8. Dismissed accordingly.

9. All the pending miscellaneous applications, if any, are also disposed of.

February 02, 2024 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO