

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

RSA-5846-2016 (O&M)
Date of decision: 19.03.2024

NIRMAL ALIAS TURMAL (DECEASED) THROUGH LRS

..Appellant

Versus

M/S ADVANCE ENGINEERS & DEVELOPERS AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Swaich, Advocate for the appellant.

Mr. Saurabh Bhardwaj, Advocate
and Mr. Gaurav Thakur, Advocate
for Mr. Sumeet Kaul, Advocate
for respondent No.1.

Mr. Govind Bhardwaj, Advocate
Mr. P.K. Shukla, Advocate
and Mr. Sunil Kumar Pandey, Advocate
for respondent No.3.

ANIL KSHETARPAL, J(Oral)

1. After hearing arguments on 29.01.2024, the following order was passed:-

“1. In this regular second appeal, the plaintiff assails the correctness of the concurrent judgments passed by both the Courts below while dismissing his suit for the grant of decree of declaration to the effect that he is the owner in possession of the land measuring 9 kanals and 6½ marlas by annulling the sale deed dated 17.03.2008, executed by him in favour of the defendants.

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

3. The plaintiff was the owner of the land measuring 9 kanals and 6½ marlas being half share of the land measuring 18 kanals and 13 marlas. He sold the same in favour of the defendants vide sale deed dated 17.03.2008, for an amount of ₹1,27,63,600/- which was sought to be paid by four different cheques. Out of the aforesaid four

cheques, two were honoured on presentation, whereas the remaining two were dishonoured. The plaintiff claims that on account of non-payment of the amount, the sale deed is required to be annulled. The defendants, while contesting the suit, claim that the full and final payment has been made in cash and the plaintiff did not return the cheques. Both the Courts below have dismissed the suit.

4. The learned counsel representing the appellant submits that though the sale deed cannot be annulled, however, the appellant is entitled to payment of the remaining payment along with interest. The learned counsel further submits that both the Courts below have held that the defendants have failed to prove the payment of the remaining amount, therefore, the sale deed is required to be annulled.

5. This Court has considered the submissions of the learned counsel for the appellant, however, finds no substance therein. It is admitted that by virtue of the sale deed, the rights were transferred in favour of the defendants and the payment of the amount was not a condition precedent for transfer of the title. Section 55 of the Transfer of Property Act, 1882, does not provide that if payment of the sale consideration is not paid, the sale would be come redundant.

6. Alternatively, the learned counsel representing the appellant submits that the defendants have failed to prove that the remaining payment of ₹75,63,600/- has not been paid and, therefore, the Court should, at least, pass a decree for recovery of the amount by moulding the relief under Order VII Rule 7 of the Code of Civil Procedure, 1908.

7. On the other hand, the learned counsel representing the applicant-bank submits that the property has been mortgaged with the Noble Cooperative Bank Limited, which has the first charge. The proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, have been initiated against the defendants.

8. The learned counsel representing the defendants prays for a short adjournment on the ground that Mr. Sumit Kaul, Advocate, representing the defendants, was unable to come from Delhi.

9. Though there is no justification, however, in the interest of justice, adjourned to 01.02.2024. To be listed in the urgent list.

10. No further request, written or oral, for grant of an adjournment, shall be entertained.”

2. Thereafter, the case was taken up on 23.02.2024 and was

- 3. The matter has been once again heard.
- 4. The learned counsel representing respondent No.1 failed to put-forth any significant arguments.
- 5. The learned counsel representing the Noble Cooperative Bank submits that in absence of prayer for refund of the earnest money, the Court should not pass such order.
- 6. This Court has considered the submissions and drawn the attention of the learned counsel representing respondent No.3, to Section 22 of the Specific Relief Act, 1963. He has read over the same and thereafter, he failed to make any submissions.
- 7. Keeping in view the aforesaid facts, the matter is remanded back to the trial Court only to decide “whether defendants have failed to pay the remaining amount of Rs.75,63,600/- or not?” The trial Court will frame a distinct and separate issue on the aforesaid aspect and call upon the parties to lead evidence.
- 8. Disposed of accordingly.
- 9. This order shall constitute a limited remand only to decide the aforesaid issue.
- 10. The parties through their learned counsel are directed to appear before the trial Court on 19.04.2024.
- 11. All the pending miscellaneous applications, if any, are also disposed of.

March 19th, 2024
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(ANIL KSHETARPAL)
JUDGE

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