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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.105

Case No. : RSA-4769-2018 (O&M)

Date of Decision : April 02, 2024

Ajit Singh Appellant
vs.
Mohinder Pal Singh Narula and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Gurcharan Dass, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. **CM-12895-C-2018** : For the reasons mentioned in the application, the same is allowed and delay of 11 days in re-filing the present appeal is hereby condoned. The application stands disposed of.
2. **Main Appeal** : The instant appeal has been filed against the concurrent findings of the Courts below, whereby suit filed by the plaintiff/appellant has been dismissed.
3. The brief facts, necessary for proper adjudication of the present appeal, are that the plaintiff/appellant (hereinafter referred to as – the plaintiff) filed a suit for mandatory injunction directing defendant/respondent no.1 (for short – defendant no.1) to get the sale deed executed and registered in his favour from defendant no.2 – Ludhiana Improvement Trust, pertaining to property i.e. Plot No.800-F, situated at Shaheed Bhagat Singh Nagar, Ludhiana. Further relief sought by the plaintiff was with

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regard to possession by way of specific performance of agreement to sell dated 09.09.2006 executed by defendant no.1 in favour of plaintiff or in the alternative, suit for recovery of Rs.10 lacs as liquidated damages and also for permanent injunction restraining defendant no.1 himself, his attorney, representatives etc. from selling, alienating or transferring in any manner the suit property or any part thereof in favour of any other person except the plaintiff.

4. The learned Trial Court, after appreciating the evidence on record, dismissed the suit filed by the plaintiff. Learned Lower Appellate Court affirmed the findings recorded by the learned Trial Court.

5. The case of the plaintiff is based upon an agreement to sell dated 09.09.2006. Actually, defendant no.1 was allotted the suit property. He just deposited Rs.8,000/- with defendant no.2 Improvement Trust and thereafter, the allotment was cancelled. Since defendant no.1 had not become the owner of the suit property, so, he had no right to execute the sale deed in favour of the plaintiff. The averments of the aforesaid agreement are very clear and defendant no.1 did not conceal any fact from the plaintiff. It is mentioned that he had only paid sum of Rs.8,000/- with the Improvement Trust as earnest money and did not deposit any other amount. The Improvement Trust had cancelled the allotment. It is further stipulated in the agreement that all formalities regarding transfer of plot from defendant no.2 Improvement Trust would be done by the plaintiff by 06.10.2006 and the same would be sole responsibility of the plaintiff. It was further agreed between the plaintiff and defendant no.1 that whether the allotment of plot in question is restored or not restored, the sole responsibility for the said

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restoration would be of the plaintiff and he would pay the remaining balance amount to defendant no.1 and under no circumstances, the amount received by defendant no.1 as earnest money, would be refunded to the plaintiff and that the entire responsibility for said restoration being of the plaintiff, defendant no.1 would not share any such responsibility.

6. The target date was mentioned as 06.10.2006. Since entire responsibility was of the plaintiff to get the plot restored but the plaintiff did not take any step for restoration of the plot. As per agreement, plaintiff failed to take any step. Plaintiff was fully aware that defendant No.1 was not the owner of the suit property at the time of execution of agreement to sell. A person cannot sell better title than he himself has in the property. Since defendant no.1 was not the owner of the plot in question so he cannot be asked to execute a sale deed of such a property, which is not owned by him.

7. There is nothing on record to show that the findings recorded by both the courts below suffer from any infirmity, illegality, perversity or are based on misreading or misappreciation of evidence on record. No question of law, much less substantial question of law, arises in the present appeal, which is accordingly dismissed in limine.

8. Pending applications, if any, shall stand disposed of along with this judgment.

April 02, 2024
monika/renu

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.