



111

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-5618-2018 (O&M)**Reserved on : 11.09.2024****Date of Decision : 25.09.2024**

Narinder Singh

....Appellant

VERSUS

Nachattar Kaur & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paramjit Batta, Advocate for the appellant.

ALKA SARIN, J.**CM-15472-C-2018**

1. The application for making good the deficiency in affixing court fee is allowed, as prayed for.

CM-15473-C-2018

2. The application for condonation of 389 days delay in re-filing the appeal is allowed, as prayed for.

RSA-5618-2018

3. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 08.07.2014 passed by the Trial Court and the judgment and decree dated 22.11.2016 passed by the First Appellate Court whereby the suit for specific performance filed by the plaintiff-appellant was partly decreed.

4. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for specific performance of the agreement to sell dated 23.10.2007 regarding land situated at village Sajuma, Tehsil and District

Sangrur @ Rs.6,00,000/- per killa i.e 8 kanals i.e for a sum of Rs.23,53,125/- after adjusting a sum of Rs.50,000/- paid as earnest money. The suit was also for declaration that the sale deed no.1847 dated 05.12.2007 allegedly executed by defendant-respondent Nos.1 to 5 in favour of defendant-respondent No.8 regarding the suit land was wrong, illegal, null and void, benami, nonest, without right, without consideration, without proper inquiry to defraud the plaintiff-appellant and the same is not binding upon his rights qua the suit land. In the alternative it was prayed for recovery of Rs.1,50,000/- out of which Rs.50,000/- was the amount of earnest money and Rs.1,00,000/- was the amount of damages alongwith costs of the suit and also future interest @ 12% per annum on the suit amount. It was averred by the plaintiff-appellant that Naranjan Singh was the owner of the suit land and upon his death his estate, including the suit land, had been inherited by defendant-respondent Nos.1 to 4, 6 and 7 being his legal heirs. On 23.10.2007 the defendant-respondent No.1 on her behalf and on behalf of defendant-respondent Nos.2 to 4, 6 and 7 agreed to sell the suit land and executed an agreement to sell in favour of the plaintiff-appellant. The suit land was agreed to be sold @ Rs.6,00,000/- per killa and cash amount of Rs.50,000/- was received by defendant-respondent No.1 on her behalf and on behalf of defendant-respondent Nos.2 to 4, 6 and 7 in the presence of witnesses. The sale deed was agreed to be executed after receiving the balance sale consideration and after getting the mutation of inheritance of Naranjan Singh sanctioned in their favour by the defendant-respondent Nos.1 to 4, 6 and 7. It was stated that the possession of the suit land was delivered to the plaintiff-appellant by the proposed vendors on the day of execution of the agreement to sell i.e 23.10.2007. According to the plaintiff-appellant he was ready and willing to

perform his part of the contract and had the remaining sale consideration and sum required for purchase of stamp etc. ready with him but the defendant-respondent Nos.1 to 4 and 6 and 7 were never ready and willing to perform their part of the contract and that the defendant-respondent Nos.1 to 5 in total violation of the agreement to sell sold the suit land to defendant-respondent No.8 vide sale deed no.1847 dated 05.12.2007. Hence, the suit. Defendant-respondent Nos.1 to 7 filed written statement raising objections that the plaintiff-appellant had no cause of action to file the suit and he had not come to court with clean hands and had suppressed material facts. On merits it was pleaded that the defendant-respondent Nos.1 to 7 had never entered into any alleged agreement to sell dated 23.10.2007 with the plaintiff-appellant and that the alleged agreement to sell was a result of fraud, mis-representation and without consideration. Rather, an agreement to sell dated 20.10.2007 was executed in favour of defendant-respondent No.8 and on the basis of the said agreement to sell the sale deed was executed in favour of the defendant-respondent No.8. It was further averred that defendant-respondent No.1 was a permanent resident of Malaysia and had been residing there for the last 20 to 25 years and that after the knowledge of the present suit she moved a police complaint against the plaintiff-appellant regarding the fraud committed by him. The remaining averments were denied and as there was no alleged agreement to sell so the question of readiness and willingness to perform their part did not arise at all. Defendant-respondent No.8 filed a separate written statement and contested the suit. Replication was filed controverting the assertions in the written statements and reiterating those in the plaint.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether defendant no.1 executed legal and valid agreement to sell dated 23.10.2007 on behalf of defendants no.1 to 7 in favour of plaintiff for consideration ? OPP
2. Whether plaintiff remained and is still ready and willing to perform his part of contract ? OPP
3. Whether plaintiff is entitled to relief of specific performance of agreement to sell dated 23.10.2007 ? OPP
4. Whether plaintiff is entitled to recovery as claimed for in the alternative ? OPP
5. Whether defendant no.8 is bonafide purchaser of suit land for valuable consideration and without notice?OPD
6. Whether plaintiff is entitled to permanent injunction as prayed for ? OPP
7. Whether plaintiff has no cause of action to file the present suit ? OPD
8. Whether plaintiff has not come to the court with clean hands. If so its effect ? OPD
9. Whether suit is not maintainable in the present form? OPD
10. Whether plaintiff has no locus standi to file the present suit ? OPD
11. Relief.

6. The Trial Court vide judgment and decree dated 08.07.2014 partly decreed the suit of the plaintiff-appellant against defendant-respondent No.1 and he was held entitled to recover the earnest money amount of Rs.50,000/- alongwith interest @ 12% per annum from the date of payment i.e. 23.10.2007 till its realization. Aggrieved by the same an appeal was filed by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 22.11.2016. Hence, the present regular second appeal.

7. Learned counsel for the plaintiff-appellant has vehemently contended that both the Courts have erred in not decreeing the suit for specific performance of agreement to sell dated 23.10.2007 and only ordering refund of the earnest money with interest. It is urged that once the agreement to sell stood proved the suit ought to have been decreed.

8. Heard.

9. In the present case the estate of Naranjan Singh, including the suit land, was inherited by his heirs – defendant-respondent Nos.1 to 4, 6 and 7. The agreement to sell dated 23.10.2007 was executed only by defendant-respondent No.1. There is nothing on the record to even remotely suggest that defendant-respondent No.1 was authorized to enter into any agreement on behalf of the other heirs of Naranjan Singh. There is no power of attorney executed by the other heirs of Naranjan Singh in favour of defendant-respondent No.1. The power of attorney produced was executed after the execution of the agreement to sell. Further, defendant-respondent Nos.6 and 7 are minors. Without any permission from the Guardian Court their share could not in any case be sold. No such permission by the Guardian Court is forthcoming. The Trial Court held that *“But it is the admitted fact that agreement was executed by Nachattar Kaur on behalf of herself and on behalf of other defendants including minors but no Power of Attorney was there in favour of defendant no.1 on the day of execution of agreement to sell dated 23.10.2007 and even no permission was sought from the court of competent jurisdiction regarding selling of property of minors which is sine qua non as per Guardian and Wards Act, 1890. Therefore, the said agreement cannot be held to have bound all the defendants except defendant no.1”*. The Trial Court further held that *“Further, the entire suit property is still joint and has not*

been partitioned till date. The granting of relief of specific performance qua defendant no.1 would amount to pass an unexecutable decree. It cannot be anticipated which portion of the suit property would fall in the share of whom. Therefore, in the peculiar facts and circumstances of the case, I deem it fit to pass the money decree instead of specific relief i.e earnest amount received by defendant no.1 from the plaintiff only against defendant no.1". The findings recorded by the Trial Court were affirmed by the First Appellate Court and it was held that *"It is proved on the record that the agreement relied upon by the plaintiff reflects that the agreement was executed by Nachhatar Kaur on behalf of herself as well as on behalf of other defendants in favour of the plaintiff. Those defendants included minor defendant also. There was no prior permission sought from the guardian court for execution of the agreement qua interest of minor. In such circumstances, the said agreement being opposed to public policy and law could not be treated as a valid agreement to give rise to the cause of specific performance".* The reasoning adopted by the Courts is sound and equitable and this Court does not find any ground to interfere with the concurrent findings recorded. No other argument has been raised by learned counsel for the plaintiff-appellant.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

25.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO