

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1099 of 2019 (O&M)

Ujjagar Singh (Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Surender Kumar and Others

... Respondent(s)

AND

2. Regular Second Appeal No. 4436 of 2018 (O&M)

Jagdeep Singh and Others

... Appellant(s)

Versus

Surender Kumar and Others

... Respondent(s)

RESERVED ON: 23.01.2024
PRONOUNCED ON: 29.01.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Santosh Kumar Sharma, Advocate
for the appellants (In RSA-1099-2019 and RSA-4436-2018).

Mr. Gaurav Goel, Advocate
for the appellant No.9, 10 and 12 (In RSA-1099-2019)
and for the appellant No.6, 7 and 9 (In RSA-4436-2018).

Mr. Amit Jhanji, Senior Advocate
with Ms. Priyanka Kansal, Advocate
for the respondents.

Anil Kshetarpal, J.

CM-639-C-2024 In RSA-1099-2019

1. As prayed for, the application is allowed.

RSA-1099-2019 And RSA-4436-2018

2. With the consent of the learned senior counsel representing the

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2018 and Regular Second Appeal No. 1099 of 2019 shall stand disposed of by a common order. Both the appeals are between the same parties, though arising from two separate agreements to sell. The learned senior counsel representing the appellants has only referred to the paper-book and the requisitioned record of the Regular Second Appeal No. 1099 of 2019 which is considered as a lead case.

3. In both the appeals, the defendants assail the correctness of the judgment and decree passed by the First Appellate Court which, in turn, has modified the judgment and decree passed by the trial Court. In substance, two separate suits filed by the plaintiffs for possession by way of specific performance of the agreement to sell have been decreed by the First Appellate Court, whereas the trial Court ordered refund of the amount after finding that the plaintiffs have successfully proved the agreement to sell and they were always ready and willing to perform their part of the contract. The trial Court held that the prices of the land have steeply increased, therefore, the plaintiffs are not entitled to the discretionary relief and the finding of the trial Court has been reversed by the First Appellate Court while confirming the finding of fact that the agreement to sell was not only entered on receipt of the staggered payments at various stages and the plaintiffs were always ready and willing to perform their part of the contract.

4. From both the appeals filed, some of the appellants have already withdrawn their appeal.

5. The facts are being noticed from the Regular Second Appeal No. 1099 of 2019 being the lead case. The defendant No.1 to 20 admit the

receipt of ₹50,00,000/- on 10.02.2006, from the plaintiffs No.12 to 15. The

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agreement to sell between the defendants No.1 to 20 in favour of the plaintiff No.12 to 15 was executed on 07.03.2006 with respect to the land measuring 1316 kanals and 7 marlas (164.54 acres) on receipt of ₹1,38,10,000/- as earnest money which included ₹50,00,000/- paid on 10.02.2006, for a total sale consideration of ₹7,89,81,000/-. The land was agreed to be sold @ ₹4,80,000/- per acre. The sale deed with respect to the land measuring 485 kanals and 13 marlas was agreed to be executed and registered on 19.05.2006, whereas the sale deed for the remaining land was agreed to be executed on 10.11.2006. The possession of the land was to be delivered at the time of execution of the sale deed and it was agreed that the plaintiff No. 12 to 15 may get the sale deed registered in their own names or in the name of any other person of their choice and the vendors shall have no objection in this respect. The execution of the agreement to sell is admitted by both the parties. The defendants while contesting the suit claimed that they were misrepresented regarding price of the land and the plaintiffs No. 12 to 15 have further entered into an agreement to sell the same land @ ₹5,27,500/-. The defendants also disputed that on 24.05.2006, ₹2,35,33,000/- was paid. They admitted the receipt of ₹77,23,000/-, however, stated that by that date, the total amount of ₹2,35,33,000/- was received. The defendants also asserted that the sale deed of the land measuring 660 kanals and 5 marlas has already been executed in favour of M/s Akshardham Constructions and others on 29.05.2006, as per the directions of the plaintiff No.12 to 15 and the remaining agreement was cancelled and the aforesaid agreement was torn with the consent of the parties.

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6. On behalf of the plaintiffs, plaintiff No.11 appeared in evidence and proved all the documents. The plaintiffs also led further evidence.

7. On the other hand, on behalf of the defendants, Rajinder Singh son of Teja Singh appeared in evidence.

8. The trial Court, on the appreciation of the evidence, came to the conclusion that the execution of the agreement to sell is proved and the plaintiffs were always ready and willing to perform their part of the contract. However, the case set up by the defendants that only ₹77,23,000/- was paid on 24.05.2006 was rejected and it was held that the defendants received the amount of ₹2,35,33,000/-. The trial Court also found no substance on the defendants' plea with respect to the cancellation of the agreement to sell. However, as already noticed, the trial Court ordered refund on the ground that the prices have steeply increased.

9. The First Appellate Court has affirmed the findings of fact arrived at by the trial Court, however, held that the trial Court did not exercise its discretion in accordance with law because mere increase in the prices of the land is not a ground to deny the relief of the specific performance of the agreement to sell. This modification of the judgment by the First Appellate Court led the defendants to file these two appeals.

10. Heard the learned senior counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record of both the Courts below.

11. The learned senior counsel representing the appellants has made the following submissions:-

has not been proved because Vinod Sharma, Author of the receipt, has not been examined.

- II) The learned senior counsel further submits that only the plaintiff No.1-Ajit Singh has entered the witness box and he is not a representative of the plaintiff No.12 to 15.
- III) There was no privity of contract between the plaintiff No. 1 to 11 and the defendants. Therefore, the suit for specific performance of the agreement to sell, filed on their behalf, is not maintainable.
- IV) The learned senior counsel referred to the amended written statement filed by the defendants to claim that the original agreement to sell was never produced in evidence. On the other hand, the learned senior counsel submitted that the execution of the receipt is not disputed. Defendant-Rajinder Singh has admitted the receipt, however, they are disputing that only an amount of ₹77,23,000/- was received instead of ₹2,35,33,000/-
- V) The learned senior counsel further submitted that the execution of the agreement to sell is not disputed between the parties and plaintiff No.11-Ajit Singh is the representative of the remaining plaintiffs particularly when the agreement to sell was common.
- VI) The learned senior counsel further submitted that the original agreement to sell was produced.

12. This Court has analyzed, evaluated and critically reappraised the evidence led by the parties in favour of their claims.

13. With respect to the first argument put forth by the learned counsel representing the appellants, it shall be noted that when Rajinder Singh appeared in evidence as DW.1, he did not dispute the execution of the receipt Ex.P6. It is also evident that he specifically admitted that the document (Ex.P6) bears their signatures and thumb impressions. Furthermore, although the defendants claim that till 25.05.2006 total amount of ₹2,35,33,000/- was received, whereas this fact is against record. The plaintiffs admit that the payments were made in the following manner:-

Amount (In ₹)	Date
50,00,000.00	10.02.2006
88,10,000.00	07.03.2006
20,00,000.00	28.03.2006
2,35,33,000.00	24.05.2006
1,63,28,000.00	29.05.2006 i.e. at the time of registration of sale deed regarding land measuring 660 Kanals 07 Marlas.
5,56,71,000.00	

14. A careful perusal of the receipt (Ex.P6) proves that the payment of ₹2,35,33,000/- is acknowledged. It is not recited in the receipt that ₹77,23,000/- has been paid to the defendants on 24.05.2006 and the total amount received till that date is ₹2,35,33,000/-. The execution of the receipt (Ex.P6) is not disputed. Hence, there is no substance in the argument of the learned senior counsel representing the appellants.

15. With respect to the next submission of the learned counsel, it shall be noted that the agreement to sell has a specific recital with respect to

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registered in favour of their nominee. In fact, in accordance with the aforesaid stipulation, the sale deed with respect to the land measuring 660 kanals and 5 marlas has already been registered by the defendants in favour of M/s Akshardham Constructions and Others on 29.05.2006. Hence, the arguments put forth by the learned senior counsel lack substance and hold no firm ground.

16. With respect to the next argument of the learned senior counsel, it shall be noted that plaintiff No.11-Ajit Singh stepped into the witness box before the trial Court. He has proved his readiness and willingness to perform his part of contract. The rights under the agreement to sell were assigned by the plaintiffs No.12 to 15 in favour of the plaintiffs No.1 to 11. Moreover, the case of the parties is based on the written documents. Keeping in view the aforesaid facts, the argument put forth by the learned counsel is devoid of substance.

17. The basis for the last argument of the learned senior counsel is not sufficient and hence lacks substantiation, because when the plaintiff No.11 appeared in evidence as PW.1, he stated that he brought the original agreement to sell dated 07.03.2006, and that was exhibited as Ex.P1. In his cross-examination, he was not suggested that the original agreement to sell has not been produced. Furthermore, the defendants, in the amended written statement, have stated that the original agreement to sell was torn after the parties arrived at settlement before Panchayat. However, when Rajinder Singh appeared in evidence, he admitted that no Panchayat was held. In these circumstances, there is no substance in the argument of the learned

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senior counsel.

18. It shall be noted here that Rajinder Singh, while appearing in evidence, has admitted that he is educated and except Teja Singh and Prithvi Singh, the remaining defendants are also educated. In these circumstances, the defendants, after having entered into various agreements to sell and the receipts acknowledging the payments at various stages cannot be permitted to deviate from the agreed route or statements.

19. Keeping in view the aforesaid facts and discussion, the result is inevitable and both the appeals are dismissed accordingly.

20. It shall be noted here that the defendants (appellants) have also filed an application under Section 28 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”) for the rescission of agreement to sell. It shall further be noted here that during the pendency of both the appeals, the entire balance sale consideration has been paid and the sale deed with respect to the entire property has already been executed on 15.11.2019. In these circumstances, the relief sought in the application filed under Section 28 of the 1963 Act cannot be granted as the claim has become irrelevant according to the facts and circumstances of the present case.

21. The miscellaneous application(s) pending, if any, in both the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 29, 2024
“DK”

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