

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

RSA-14960-2018 (O&M)

Reserved on : 01.02.2024

Date of Decision : 08.02.2024

RAMANDEEP SINGH

...Appellant

Versus

NARAINA (SINCE DECEASED) THROUGH HIS LRS

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Sharma, Advocate for the appellant.

ALKA SARIN, J.**CM-19324-C-2018**

For the reasons mentioned therein, the application is allowed and the delay of 29 days in refiling the appeal is condoned.

CM-19325-C-2018

This is an application for making the deficiency in court fee good. Since the court fee has already been made good, the present application is disposed off as infructuous.

RSA-14960-2018

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 19.09.2016 and 15.05.2018 passed by the Trial Court and the lower Appellate Court respectively, whereby the suit for specific performance filed by him has only been partly decreed qua recovery of Rs.6,00,000/- along with interest @ 6%.

2. As per the plaintiff-appellant, a double-storied house situated in the abadi of Village Kular, Tehsil Shahkot is owned and possessed by the defendant-respondent and on 23.06.2008 the defendant-respondent entered into an

agreement to sell the property in dispute i.e. the house alongwith all rights thereto in favour of the plaintiff-appellant for Rs.6,50,000/-. A sum of Rs.6,00,000/- was received by the defendant-respondent as earnest money and an agreement to sell dated 23.06.2008 was executed wherein the date for execution and registration of the sale deed on payment of balance sale consideration was agreed to be on or before 16.06.2011. It was also agreed that in case the defendant-respondent resiled from his part of the agreement and failed to execute the sale deed then the plaintiff-appellant shall have the right to seek specific performance or may recover double the amount of earnest money and in case the plaintiff-appellant resiled then the earnest money paid by him would stand forfeited and the agreement to sell would stand canceled. As per the plaintiff-appellant he always remained ready and willing to perform his part of the agreement and was still ready and willing to do so but the defendant-respondent failed to perform his part of the agreement and resiled from the same without any reason. Hence, the suit. On notice, the defendant-respondent appeared and denied execution of the agreement to sell and receiving any amount and took the stand that he was not the owner of the property in dispute and his sons are owners in possession of the same. The electric connection was in the name of Joginder Singh son of Naraina and the telephone connection was in the name of Harjinder Singh son of Naraina. It was further submitted that house in dispute was the only residential house for living of the entire family of the defendant-respondent and there was no question of having agreed to sell the same. The agreement to sell was alleged to be false, frivolous and vexatious being a result of fraud. Replication to the written statement was filed reiterating the version of the plaintiff.

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

“1. Whether plaintiff remained ready and willing to perform his part of agreement ? (OPP)

1A. Whether plaintiff is entitled to decree of possession by way of specific performance of agreement to sell dated 23.06.2008 as prayed for ?(OPP)

1B. Whether in the alternative plaintiff is entitled to any recovery from the defendant, if so, for what amount? (OPP)

2. Whether suit is not maintainable ?(OPD)

3. Whether plaintiff has not come to the court with clean hands and is guilty of suppression of material facts ? (OPD)

4. Relief”.

4. The Trial Court vide impugned judgment and decree dated 19.09.2016 decreed the suit granting to the plaintiff-appellant recovery of Rs.6,00,000/- along with interest @ 6% per annum from the date of filing of the suit till realization of the decretal amount. Aggrieved by the said judgment and decree, the plaintiff-appellant preferred an appeal. Vide the impugned judgment and decree dated 15.05.2018 the appeal was dismissed by the lower Appellate Court. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the agreement to sell having been proved and the readiness and willingness of the plaintiff-appellant being established, the Courts below have erred in not decreeing his suit in toto.

6. Heard counsel for the plaintiff-appellant.

7. In the present case both the Courts below have reached concurrent findings of fact that the plaintiff-appellant had failed to establish that the defendant-respondent was the owner of the property in dispute. Once the title of the defendant-respondent could not be established a decree of specific performance cannot be passed against him. The Trial Court found that

“Therefore, in the case in hand plaintiff failed to prove title of defendant Naraina

over suit property/house in question, subject matter of the agreement to sell dated 23.06.2008, to prove his entitlement to enter into the aforesaid agreement with the plaintiff, which is essential for granting relief of specific performance in favour of the plaintiff". In the appeal the lower Appellate Court held that "In view of my above discussion, plaintiff has failed to prove the ownership and possession of defendant Naraina upon the suit property. Hence, when defendant Naraina who had executed agreement to sell dated 23.06.2008 in favour of plaintiff was not owner of the suit property, then the relief of specific performance of agreement to sell can not be granted and as such learned court below has rightly granted the alternative relief of recovery of Rs.6,00,000/-". There is not an iota of evidence available to conclusively establish that the defendant-respondent was the owner of the property in dispute and thus competent to enter into the agreement to sell. Since the execution of the agreement to sell was proved, the Courts below have rightly granted the plaintiff-appellant the relief of recovery of the amount of earnest money. No other point was argued.

8. In view of the above and in view of the concurrent findings of facts returned by both the Courts below, I do not find any merit in the present regular second appeal. No question of law much less any substantial question of law arises in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024
D.Bansal

(ALKA SARIN)
JUDGE

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