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Ram Mehar Vs Suresh Kumar

Regular Second Appeal No. 2784 of 2010

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 3, 2012

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: M.S. Khera, with Mr. Dharminder Singh, for Mr. B.S. Sewak, for the Appellant; S.K. Sood, for the Respondent

Judgement

L.N. Mittal, J.
Plaintiff -- Ram Mehar has filed this second appeal. Plaintiff/appellant filed suit against defendant/respondent Suresh Kumar

for specific performance of agreement to sell dated 20.10.1999 alleging that the defendant/respondent agreed to sell the suit land measuring 13

kanals 11 marlas to the plaintiff for total consideration of Rs. 3,30,375/- and received Rs. 1,42,000/- as earnest money and executed the aforesaid

agreement. The plaintiff/appellant always remained ready and willing to perform his part of the contract, but the defendant/respondent committed

breach thereof. Hence the suit.

2. Defendant broadly denied the plaintiff"s averments and raised various other pleas.

3. Learned Additional Civil Judge (Senior Division), Sonepat vide judgment and decree dated 29.01.2009 instead of decreeing the suit for specific

performance of the agreement, decreed the suit for recovery of Rs. 1,42,000/- (refund of earnest money) along with interest thereon @9% per

annum from the date of filing of suit till recovery, holding that the agreement in question was executed as the defendant failed to repay the loan

amount. First appeal preferred by the plaintiff has been dismissed by learned District Judge, Sonepat vide judgment and decree dated 09.03.2010.

Feeling still aggrieved, plaintiff has filed this second appeal.

4. I have heard counsel for the parties and perused the case file.

5. Counsel for the appellant contended that since the defendant failed to pay the amount of Rs. 1,42,000/-, the agreement became enforceable by

way of specific performance because agreement to sell in the alternative on failure of the debtor to repay the loan is neither illegal nor against public

policy and, therefore, plaintiff/appellant is entitled to specific performance of the agreement.

6. I have carefully considered the aforesaid contention, but the same cannot be accepted in the facts and circumstances of the instant case.

7. Document Ex: D-1 dated 10.03.1998 reveals that some compromise was effected between the parties apparently on account of some loan

taken by defendant from the plaintiff. The defendant agreed to sell his land measuring 2 kanals 18 marlas to the plaintiff vide writing Ex:D-1 subject

to the condition that if the defendant repaid the loan of Rs. 20,000/- with interest upto 30.06.1999, the agreement shall stand cancelled whereas in

the event of default, the defendant shall execute the sale deed of the said land. Thereafter, there was agreement dated 09.12.1998 mark "D" for

sale of the suit land i.e 13 kanals 11 marlas which is subject matter of the instant suit. According to this agreement coupled with receipt of even

date, earnest money of Rs. 95,000/- was paid. Plaintiff affirmed affidavit Ex. D-2 dated 09.12.1998 (the date of agreement and receipt) that if the

defendant repaid earnest money of Rs. 95,000/- along with interest upto 28.10.1999, then the plaintiff shall not get the sale deed of the suit land

executed. Thereafter came into existence the impugned agreement dated 20.10.1999. Apparently the said agreement was executed because the

defendant failed to pay back the aforesaid earnest money of Rs. 95,000/- with interest. It also appears that the amount of Rs. 1,42,000/- as

earnest money was recited in the impugned agreement after adding interest to earlier earnest money of Rs. 95,000/-.

8. From the aforesaid series of transactions, it becomes manifest that the defendant in fact never intended or agreed to sell the suit land to the

plaintiff and the impugned agreement was executed only at security for repayment of the loan with interest. In this view of the matter, the question

of specific performance of the agreement would not arise.

9. However, it has to be noticed that the courts below have awarded interest on the earnest money since the date of filing of suit although it should

have been awarded since the date of impugned agreement. To this extent, judgments of the courts below are perverse and illegal and require

modification, giving rise to substantial question of land to this effect. Accordingly, the instant second appeal is allowed partly. Impugned judgments

and decrees of the courts below are modified. In addition to refund of Rs. 1,42,000/- along with pendent lite and future interest as awarded by

courts below, plaintiff/appellant shall also be entitled to interest @ 12% per annum on the amount of Rs. 1,42,000/- w.e.f. 20.10.1999 the date of

the impugned agreement till 06.12.2000 the date of filing of the suit. The parties shall suffer their respective costs of this appeal.