

(2004) 02 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1118 of 1984

Gurcharan Singh

APPELLANT

Vs

Harbans Singh

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Citation : (2004) 138 PLR 73 : (2004) 3 RCR(Civil) 575

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : G.S. Punia, for the Appellant;

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The present Regular Second Appeal is directed against the judgment and decree of the Additional District Judge, Ludhiana, dated December 5, 1983 whereby the judgment and decree of the Subordinate Judge, Ist Class, Ludhiana, dated March 9, 1981 was partly reversed.

2. A brief narrative of the facts would be appropriate;

The defendant-respondent executed an agreement to sell dated January 24, 1976 whereby he agreed to sell the agricultural land to the plaintiff-appellant. Pursuant to this agreement to sell, the respondent admittedly received a sum of Rs. 5,000/- as earnest money and another sum of Rs. 10,000/- on March 28, 1976, The sale deed was to be executed/registered on or before June 1, 1976. The case of the appellant is that as the competent authority did not grant the sanction to execute the sale deed, the amount of Rs. 15,000/- paid by him, as referred to above be refunded to him.

3. The respondent, after putting in appearance, contested the suit on the plea that the amount paid by the appellant had been forfeited as he failed to get the sale deed executed.

4. The learned Trial Court, after framing the issues and taking evidence of the

parties, both oral and documentary, found as a matter of fact that the appellant was in no way responsible for the non-execution of the sale deed and held that it was the respondent who was at fault for failure to obtain the requisite permission from the competent authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. The learned trial court therefore, decreed the suit for recovery of a sum of Rs. 15,000/-.

5. The defendant-respondent preferred an appeal before the Additional District Judge, Ludhiana, Vide judgment and decree dated December 5, 1983, the appeal was partly accepted and the decretal amount was reduced from Rs. 15,000/- to Rs. 10,000/-.

6. In this appeal, the plaintiff-appellant impugns the afore-mentioned judgment and decree of the learned Additional District Judge, Ludhiana.

7. The learned counsel for the appellant has argued that the first Appellate Court was not justified in modifying the judgment and decree of the trial Court and reducing the decretal amount from Rs. 15,000/- to Rs. 10,000/-. He further argued that the first Appellate Court, without examining the matter in detail, without perusing the documents and without assigning any reasons has come to an erroneous finding that it was the appellant who was guilty of the breach of the contract and therefore the amount of earnest money i.e. Rs. 5,000/- could not be refunded to him. He further states that the first Appellate Court, while modifying the judgment and decree of the trial court, did not return any finding and did not advance any reasons holding that the appellant was guilty of default.

8. I have perused the pleadings, the evidence on record, the judgments of the Courts below and also heard the arguments addressed by the learned counsel for the appellant. The contention of the learned counsel for the appellant, to the effect that the first Appellate Court reversed the finding of the trial Court, on the question of the party responsible for the default in the execution of the sale deed, without assigning any reasons appears to be well founded. A perusal of the impugned judgment reveals that while holding that it was the appellant who was responsible for the default, no reasons whatsoever have been set forth by the first Appellate Court. On the crucial issues, i.e. as to whether the appellant was ready and willing to execute the sale deed and also to whether the appellant was guilty of default, the learned trial Court held that the appellant was always ready and willing to perform his part of the contract and was in no manner responsible for the non-execution of the sale deed. It was the respondent who failed to obtain the necessary sanction and was therefore responsible for breach of contract. The first Appellate Court reversed these findings without assigning any reasons,. It was the duty of the first Appellate Court to examine the matter in detail, narrate the facts, advert to the arguments and thereafter by a process of reasoning, discernible from the judgment, arrive at a conclusion for or against the findings returned by the trial Court. The judgment of the first Appellate Court is devoid of any reasons, that led it to reverse the findings of the trial Court, On account of the failure of the first Appellate Court to assign any reasons for

holding the appellant responsible for the breach of contract, I am of the opinion that the first Appellate Court failed to exercise its jurisdiction, Normally in these circumstances, the matter should have been remanded for a decision afresh. However, on account of the fact that the matter has been pending since long, I deem it appropriate to proceed to decide the matter.

9. A perusal of the evidence on the record reveals that Vide letter dated April 27, 1977 (Exhibit DX), the Urban Celling Officer, Ludhiana, granted sanction for the execution of the sale deed, However, vide letter dated May 31, 1977 (Exhibit PY), the said officer directed the Sub Registrar (Rural), Ludhiana not to register the sale deed on the basis of the sanction Exhibit DX. The bona fides of the appellant are further borne out from the letter dated August 3, 1976 (Exhibit PX) whereby the Deputy Commissioner, Ludhiana, informed the appellant that sanction to register the sale deed could not be granted on the basis of the application filed by a vendee. It is thus apparent that the sale deed could not be executed for any fault on the part of the appellant. The appellant filed all necessary applications for obtaining the sanction but the authorities under the above mentioned Act declined the permission.

10. The respondent on the other hand, was unable to place on record any material to show that the appellant was in any way responsible for the failure of the authorities to grant sanction. In fact, it appears that the respondent did not care to pursue the matter. This is apparent from the letter (Exhibit PX) dated August 3, 1976, whereby the Deputy Commissioner, Ludhiana, informed the appellant that sanction to register the sale deed could not be granted on the basis of the application filed by a vendee. Thus, the appellant was in no way guilty of any default. It was the respondent who did not make arty effort to get the sale deed executed and therefore it would be highly unjust and inequitable to permit the respondent to forfeit the earnest money of Rs. 5,000/-, The first Appellate Court has declined to refund the earnest money on the ground that it was the appellant who had failed to perform his part of the contract.

11. From what has been narrated above, it is apparent that it was the respondent who was responsible for the default. In this view of the matter, the equitable relief of refund of earnest money cannot be denied to the appellant. Consequently, the judgment and decree of the first Appellate Court in so far it reverses the judgment and decree of the trial Court, with respect to the refund of the amount of Rs. 5,000/- is set aside and the judgment and decree of the trial Court restored. No order as to costs.