(2006) 08 P&H CK 0468

In the Punjab And Haryana At Chandigarh

Manohar Singh APPELLANT

Vs

Roshan and Another RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Citation : (2006) 08 P&H CK 0468

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The present appeal has been filed by the plaintiff challenging the judgment of the learned lower appellate Court dated 22.03.1999. The appellant had filed a suit for recovery of an amount of Rs. 96,609/- along with interest at the rate of one percent per month on the allegation that the respondents had entered into an agreement dated 14.02.1986 with the appellant to sell the suit land measuring 34 kanals 4 marlas for a total consideration of Rs. 1,84,000/-. In pursuance to this agreement a sum of Rs. 42,000/- was paid to the respondents at the time of execution of the agreement and it was stipulated that the sale deed would be executed on or before 02.06.1986 and the balance sale consideration of Rs. 1,42,000/- was to be paid before the Sub- Registrar. The appellant further pleaded that the respondents had committed a fraud as the factum of the earlier two mortgage deeds qua the suit property was not disclosed to him. The respondents demanded other sum of Rs. 50,000/- to redeem the mortgage, which was paid on 04.06.1986 against the receipt thumb marked by them. The suit land was further not got redeemed and neither was any attempt made to get the sale deed executed since the respondents were not in a position to execute the same in view of the earlier mortgage deeds and in view of the fact that no Income Tax Clearance has been obtained. The appellant prayed that his suit for recovery of the amount be decreed. He did not press for the enforcement of the agreement.

2. The respondents in their written statement admitted that they have entered

into an agreement on 14.02.1986 and admitted the terms of the agreement. It was further pleaded that the land was infact mortgaged with one Manohar son of Mehri for a sum of Rs. 25,000/- and they had agreed to get the land redeemed and the appellant was informed that he could adjust the remaining amount against the amount of consideration in case the land was not redeemed. The respondents have also admitted that they had agreed for obtaining the Income Tax Clearance Certificate and the appellant was required to furnish his affidavit regarding his source of investment on or before 26.05.1986. Since he did not furnish the aforesaid affidavit, further steps for execution of the sale deed could not be taken.

3. It was denied that an amount of Rs. 50,000/- was paid to them on any subsequent date. In short, the respondents pleaded that the fault was with the appellant as he had not furnished the requisite affidavit so as to enable them to get the Income Tax Clearance Certificate in furtherance of the execution of the agreement to sell. On the pleading of the parties, the trial Court framed the following issues:

1. Whether the agreement of sale was entered into between the parties, as alleged? OPP.

2. Whether the plaintiff is entitled to recover the suit amount from the defendants? OPP

3. Whether the plaintiff is barred by his act, conduct, admission and latches from filing the present suit? OPD.

4. Whether this suit is not maintainable in the present form? OPD.

5. Whether the defendants are entitled to special costs? OPD.

6. Relief.

4. The trial Court decreed the suit of the appellant, but in appeal the findings of the trial Court were reversed, which has resulted in the present appeal having been filed by the appellant.

5. No one has put in appearance on behalf of the appellant. Mr. C.B. Goel, learned Counsel appearing for the respondents, however, contended that the respondents were always willing and ready to perform their part of the agreement and it was the appellant who defaulted. Since he has defaulted, he could not take advantage of his own wrong and there was no question of returning the amount to the appellant as there is a clause of forefeiture under which the earnest money was to be forefeited.

6. I have heard the learned Counsel for the respondents and have perused the record, which shows that the respondents were present before the office of Sub-Registrar on the stipulated date i.e. 02.06.1986. The endorsement of the Sub-Registrar mentions that an applciation was presented to him at 8.25 AM and it was ordered to be put up at 12.30 PM and then it was kept pending upto 1.25 PM

wherein presence of the respondents was recorded, but no one had turned up on behalf of the appellants. In the application it was mentioned that respondents had obtained the Income Tax Clearance Certificate. The findings of the learned lower appellate Court, therefore, cannot be held to be perverse. These are pure findings of fact which cannot be interfered with the Regular Second Appeal. The Hon''ble Supreme Court in the judgment reported as Veerayee Ammal Vs. Seeni Ammal, , wherein it has been held as follows:

The question of law formulated as substantial question of law in the instant case cannot, in any way, be termed to be a question of law much less as substantial question of law. The question formulated in fact is a question of fact. Merely because of appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law. In this case Issue No. 1, as framed by the trial Court, was, admittedly, an issue of fact which was concurrently held in favour of the appellant plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the Courts below, arrived at on appreciation of evidence.

7. Reverting back to the facts of the present case, the appellant has abandoned his case for specific performance of the agreement but has only prayed for recovery of the amount. Once the respondents have been shown to be ready and willing to perform their part of the agreement then the appellant cannot enforce his right to recover the amount and no discretion can be exercised in his favour. This Court in a judgment reported as 1978 P.L.R, 773 is held as follows:

Where it was found that the defendant-Vendor was always ready and willing to execute his part of the agreement but the plaintiff-Vendee was not agreeable to get the document executed and pay the remaining consideration on the ground that the plaintiff should be given possession of the property at the time of registration.

Held, that as the plaintiff-Vendee had committed breach of the agreement because the clause regarding delivery of possession was an interpolation made by the plaintiff-vendee in the agreement of sale subsequently, he was not entitled either to specific performance of the contract or damages.

8. In this view, there can be no interference in the Regular Second Appeal which involves a question of fact and specially in view of the overwhelming evidence adduced by the respondents indicating that they were always willing and ready to perform their part of the agreement.

9. No substantial questions of law has been shown to have arisen in the present appeal, which is totally devoid of merit and is dismissed as such.

