

(2004) 03 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 914 of 1984

Mohan Singh

APPELLANT

Vs

Jarnail Singh

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Citation : (2005) 1 LJR 505 : (2004) 3 RCR(Civil) 752

Hon'ble Judges : Rajive Bhalla, J

Advocate : Mr. M.S. Dhillon, Advocate. None., Advocates for appearing Parties

Judgement

Rajive Bhalla, J.

1. The plaintiffappellant has filed this second appeal impugning the judgment and decree of the District Judge, Amritsar, dated November 18, 1983 whereby the judgment and decree of the Subordinate Judge Ist Class, Ajnala dated May 21, 1982 was partly reversed.

2. The facts leading to the filing of the present appeal are that Jarnail Singh (defendantrespondent No. 1) executed an agreement to sell in favour of Mohan Singh (plaintiffappellant) on January 25, 1979 agreeing to sell 36 Kanals 13 Marlas of land at a rate of Rs. 22,000/ per acre. Earnest money of Rs. 12,000/ was received by respondent No. 1 on January 25, 1979 and it was agreed that the sale deed would be executed on or before April 01, 1980. The agreement to sell further stipulates that in the eventuality of respondent No. 1 failing to execute the sale deed, the appellant would be entitled to receive damages amounting to Rs. 30,000/. The appellant is alleged to have paid another sum of Rs. 18,000/, to respondent No. 1 on March 30, 1979. On April 01, 1980 the appellant, arrived at the office of the Tehsildar, Ajnala, for the execution of the sale deed but respondent No. 1 absented himself. In the interRegulation m, respondent No. 1 executed two sale deeds in favour of respondent Nos. 2 to 4 on January 28, 1980 and January 29, 1980, transferring the land agreed to be sold to the appellant to respondent Nos. 2 to 4. Thereafter, the appellant issued a registered notice dated March 28, 1980, calling upon respondent No. 1 to

execute the sale deed. As respondent No. 1 failed to execute the sale deed, the appellant filed a suit for specific performance and in the alternative prayed for the recovery of Rs. 60,000/ i.e. Rs. 30,000/ as earnest money and Rs. 30,000/ as damages.

3. Respondent No. 1, after putting in appearance, filed a written statement alleging that the agreement to sell had been executed by fraud, but in the same breath averred that he had received a sum of Rs. 2,000/ only and had not received the entire amount. It was further pleaded that despite his repeated requests to the appellant to pay the balance amount and get the sale deed executed, the appellant failed to do so. It was also averred that the appellant was aware of the previous agreement dated December 04, 1978 executed by respondent No. 1 in favour of respondent Nos. 2 to 4.

4. Respondent Nos. 2 to 4 put in appearance and sought the dismissal of the suit on the plea that they had no knowledge of the existence of any agreement of sell, in favour of the appellant and that respondent No. 1 had executed a prior agreement to sell in their favour which had culminated into two sale deeds. These respondents also raised a plea that they were bona fide purchasers without notice for valuable consideration.

5. The learned trial Court, after framing issues, recorded evidence and hearing arguments held that the agreement to sell dated January 25, 1979 had indeed been executed by respondent No. 1 in favour of the appellant, respondent No. 1 had received a sum of Rs. 12,000/ at the time of the execution of the agreement to sell, respondent No. 1 had received a sum of Rs. 18,000/ on March 30, 1979 and that the appellant had always been ready and willing to perform his part of the agreement to sell and it was respondent No. 1 who had failed to execute the sale deed. However, the trial Court accepted the plea of respondent Nos. 2 to 4 that they were bona fide purchasers for consideration, and, therefore, declined the relief of specific performance. The learned trial Court decreed the suit for refund of Rs. 12,000/ paid at the time of execution of the agreement to sell, Rs. 18,000/ paid on March 30, 1979 and also held that as respondent No. 1 had failed to execute a sale deed in favour of the appellant, he was liable to pay a sum of Rs. 30,000/, as mentioned in the agreement to sell. Thus, the learned trial Court dismissed the suit for specific performance, but decreed the suit for the recovery of Rs. 60,000/ with interest at the rate of six per cent per annum.

6. The appellant did not file any appeal and thus the findings, declining the relief of specific performance attained finality. Respondent No. 1, on the other hand, preferred an appeal before the learned District Judge, Amritsar, challenging the judgment and decree of the learned trial Court regarding the refund of earnest money and grant of damages of Rs. 30,000/. The learned District Judge, Amritsar, vide his judgment and decree dated November 18, 1983 reduced the decretal amount from Rs. 60,000/ to Rs. 12,000/ but enhanced the interest from six to twelve per cent per annum and consequently passed a decree for recovery of Rs. 18,960/. The first Appellate Court set aside the payment of Rs. 30,000/ as

also the amount of Rs. 18,000/ alleged to have been received by respondent No. 1 on March 30, 1979. The present appeal impugns the part of the judgment and decree of the learned District Judge, declining the relief of damages and the sum of Rs. 18,000/.

7. Counsel for the appellant states that the following questions of law arise for consideration in the present appeal :

"(i) Whether the first Appellate Court could have reversed a finding of the trial Court without advertng to the facts, referring to the arguments and assigning any reasons in support thereof ?

(ii) Whether the party committing the default is liable to pay the pre determined amount settled by the parties in the agreement ?"

8. In support of the first question of law, learned counsel for the appellant has argued that the judgment and decree of the first Appellate Court is illegal as the learned District Judge, without advertng to any facts, without recording arguments addressed, reversed the finding of the trial Court on the question of payment of a sum of Rs. 30,000/ by respondent No. 1. It is further contended that the first Appellate Court has failed to exercise jurisdiction, as no reason whatsoever has been assigned for reversing the judgment and decree of the trial Court. Insofar as the second question of law, it is contended by the counsel for the appellant that parties had executed the agreement Exhibit P.1. The said agreement contains a stipulation that in the eventuality of respondent No. 1 failing to execute the sale deed, he would be liable to pay to the appellant a sum of Rs. 30,000/. The learned trial Court found that respondent No. 1 was the defaulting party and, therefore, fastened liability of Rs. 30,000/ on him. It is further contended that the learned District Judge has, without reversing the aforementioned finding of the trial Court, declined the relief of Rs. 30,000/.

9. Learned counsel for the appellant further contends that the learned first Appellate Court was not justified in holding that the payment of Rs. 18,000/, to respondent No. 1, on March 30, 1979 has not been adequately proved. The first Appellate Court has wrongly held that Behari Lal (P.W. 4) as an unlicensed Petition Writer, and that Behari Lal had admitted that the receipt (Exhibit P.3) was interpolated by substitution of the date of the receipt and the Khasra numbers at a subsequent time.

10. No one has put in appearance on behalf of the respondents.

11. After examining the record and taking into consideration the arguments of the counsel for the appellant, I am of the considered opinion that the first Appellate Court committed a serious illegality in reversing the judgment and decree of the trial Court with respect to the award of Rs. 30,000/. A perusal of the impugned judgment reveals that while reversing the judgment and decree of the trial Court, with respect to the payment of Rs. 30,000/, the learned District Judge did not assign any reasons. The first Appellate Court was duty bound to

examine the matter in detail, advert to the facts, record the argument addressed by the counsel for the parties and thereafter by a process of reasoning arrive at a conclusion for or against the finding returned by the trial Court. A perusal of the judgment and decree of the first Appellate Court reveals that, what to talk of a process of reasoning, no finding has been returned as to why the judgment and decree of the trial Court has been reversed and as to why the appellant is not entitled to the sum of Rs. 30,000/. In this view of the matter, it is apparent that the judgment and decree of the first Appellate Court suffers from a failure to exercise jurisdiction and is, therefore, liable to be set aside. As the learned District Judge has not assigned any reasons, in normal circumstances the case should have been remanded. However, in view of the fact that the matter has been pending since long I have no alternative but to examine the matter on merits.

12. The learned counsel for the appellant has rightly contended that the learned District Judge did not reverse the judgment and decree of the trial Court on the question of default. A perusal of the judgment of the first Appellate Court reveals that in fact the finding of the trial Court, with respect to default, has been affirmed. As this finding has attained finality having not been challenged by respondent No. 1, I find no ground to interfere in respect thereof. In view of the fact that the finding regarding default has been returned against respondent No. 1, he is bound by the consequences stipulated in the agreement (Exhibit P.1), which requires the defaulting party to pay to the other party a sum of Rs. 30,000/. Thus, the learned District Judge erred in reversing the judgment of the trial Court and deciding to the appellant the relief of Rs. 30,000/.

13. Insofar as the matter with respect to the payment allegedly made by the appellant, pursuant to receipt (Exhibit P.3), is concerned, I have examined it in detail and find no reason to interfere with the finding of fact recorded by the first Appellate Court. The said Court appreciated the evidence on record namely the receipt (Exhibit P.3), the statement of the Deed Writer Behari Lal and arrived at a finding of fact that the receipt (Exhibit P.3) did not inspire confidence. The counsel for the appellant has not been able to refer to any evidence on record that would indicate that the said finding of fact was perverse or contrary to the evidence on record. In this view of the matter, the judgment of the first Appellate Court insofar as it declines the relief with respect to the amount alleged to have been received by respondent No. 1 pursuant to the receipt (Exhibit P.3) calls for no interference.

14. The judgment of the first Appellate Court reveals that while accepting the appeal, it has awarded interest at the rate of twelve per cent per annum whereas the trial Court had awarded interest at the rate of six per cent per annum from the date of the decree till the recovery of the decretal amount. The first Appellate Court has not assigned any reasons for awarding interest at the rate of twelve per cent per annum. The transaction in question is a simple agreement to sell and by no stretch of imagination can be categorised as a commercial transaction

where interest beyond six per cent could be awarded. In this view of the matter, the award of interest at the rate of twelve per cent per annum deserves to be modified to six per cent per annum.

In view of what has been stated above, the present appeal is partly allowed. The judgment and decree of the first Appellate Court is set aside insofar as it declines the relief of Rs. 30,000/ and the judgment and decree of the trial Court to the extent it decrees the suit of the plaintiffappellant for the recovery of Rs. 42,000/, that is Rs. 12,000/ paid by the appellant to respondent No. 1 on January 25, 1979 and Rs. 30,000/ as damages, is restored with future interest at the rate of six per cent per annum from the date of the decree to the realisation therefor. The appellant would also be entitled to the proportionate costs.