(2012) 03 P&H CK 0298

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2035 of 1988

Ram Chander APPELLANT

Vs

Bhoop Singh and others RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 03 P&H CK 0298

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Ram Chander-appellant has preferred this second appeal against judgment dated 15.05.1986 vide which suit of the plaintiffs was decreed against the defendant-appellant and the appeal preferred against the judgment and decree passed by the trial court was dismissed by the First Appellate Court vide judgment dated 15.06.1988. The facts necessary for the disposal of present appeal are that Bhoop Singh and others filed a suit for specific performance, inter alia, alleging that they entered into a contract with the appellant-defendant for purchase of land in question for a sum of Rs. 36,000/- on 25.02.1981. It was agreed at that time that Bhoop Singh and Tula Ram shall be entitled to get the sale deed executed in their favour on payment of sale consideration and out of total sale price, a sum of Rs. 23,765/- were paid to the defendant-appellant at the time of execution of the agreement to sell while the remaining of Rs. 12,235/- were agreed to be paid before the execution of the sale deed. As the defendant-appellant failed to execute the sale deed in favour of the plaintiffs-respondents despite payment of the remaining sale consideration and despite asking him to do so time and again, the plaintiffs-respondents filed the present suit.

2. The appellant-defendant contested the suit by filing written statement and took the preliminary objection regarding the maintainability of the suit and took the stand that defendant was paid only an amount of Rs. 13,665/- and the

remaining sale consideration has not been paid so far; the agreement in question is based on fraud and misrepresentation and is without jurisdiction; Rs. 12,235/- was to be deposited in the Punjab National Bank by the plaintiffs-respondents as per the agreement, but the same was not deposited by them; the plaintiffs-respondents have not served any notice regarding their willingness to get the sale deed executed and as such the present suit is liable to be dismissed.

3. Plaintiffs-respondents filed replication reiterating the averments pleaded by them in their plaint and controverting the assertions taken by the appellant-defendant in his written statement.

4. On the pleadings of the parties, following issues were framed by the learned trial court:-

1. Whether the plaintiffs were to deposit Rs. 12,235/- in the Punjab National Bank according to the terms and conditions of agreement dated 25.2.1981 ? OPP.

2. Whether Rs. 23,765/- and been paid to the defendant as alleged in paragraph 1 (ka) of the plaint ? OPP.

3. Whether plaintiffs have been ready and willing to perform their part of contract ? OPP

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

5. Whether any fraud has been played upon the defendant and the agreement is without consideration? OPD

6. Whether the suit is false and frivolous and defendant is entitled to compensatory costs ? OPD

7. Relief.

5. Thereafter, both the parties adduced their evidence and after hearing both the parties and assessment of the evidence, available on the record, the learned trial court decreed the suit of the plaintiffs-respondents and the appellant-defendant was directed to get the sale deed executed on or before 17.07.1986.

6. Aggrieved by the said judgment the appellant-defendant preferred appeal before the lower Appellate Court which was dismissed by the learned Additional District Judge vide judgment dated 15.06.1988, hence this appeal.

7. Learned Counsel for the appellant has vehemently argued that as per the agreement Rs. 12,235/- were not deposited by the plaintiffs-respondents in the Punjab National Bank, therefore, the plaintiffs-respondents are not entitled for any relief by way of specific performance. He has further argued that no notice was served on the defendant/appellant by the plaintiffs-respondents calling them to execute sale deed and as they were not willing to perform their part of the agreement, the suit is liable to be dismissed but both the courts below have erred in passing the impugned judgment in favour of the plaintiffs-respondents and as such the same are liable to be set aside.

8. I have given my thoughtful consideration to the arguments advanced by the Learned Counsel for the appellant but the same does not hold any water and are liable to be rejected outrightly.

9. It is admitted case of both the parties that an agreement to sell was executed between the parties for purchase of a piece of land for a sum of Rs. 36,000/- vide Ex-P1 dated 25.2.1981. According to the plaintiffs respondents a sum of Rs. 23,765/- were paid to the appellant-defendant at the time of execution of the agreement to sell which fact has been denied by the defendant-appellant. However, from the perusal of the statements of the plaintiffs'' witnesses and document Ex-P1 it is proved on record that a sum of Rs. 23,765/- were paid in cash to the defendant-appellant Ram Chander in the presence of the witnesses. Bhoop Singh-PW2 has categorically deposed that defendant-appellant refused to execute the sale deed in their favour despite the fact that they were and still are ready and willing to get the sale deed executed. He also deposed that Rs. 12,235/- were deposited by them in the Punjab National Bank, Khanna and produced the certificate issued by the Punjab National Bank Ex. P1/4, Ex. P1/5 and statement of account Ex. P-4 to prove the fact that the plaintiffs-respondents deposited the said amount in the Punjab National Bank, Khanna, as per the terms and conditions of the agreement to sell. It shows that the plaintiffs-respondents were always ready and willing to perform their part of the contract. Rather it was the defendant-appellant who has failed to execute sale deed in favour of the plaintiffs-respondents despite receipt of the payment. As regards the fact that the plaintiffs-respondents had not served any notice upon the defendant-appellant regarding execution of the sale deed in their favour, the same does not have any effect, firstly because the plaintiffs-respondents have already paid the total consideration amount to the defendant-appellant; and they were requesting the appellant to get the sale deed executed in their favour and it was the defendant-appellant who was putting off the matter on one pretext or the other; and secondly the suit was filed by them immediately after the lapse of the period mentioned in the agreement to sell Ex-P1. There is no undue delay in filing the suit for specific performance by the plaintiffs-respondents against the defendant-appellant. Both the courts below have rightly observed that the plaintiffs-respondents were ready and willing to perform their part of the contract and rather it was the defendant-appellant who was not at all willing to perform his part of the contract despite receipt of the amount in question. As such concurrent findings of facts about the execution of agreement to sell, payment of earnest money by the plaintiffs to the defendant and on the question of willingness and readiness do not warrant any interference in the present appeal. In my considered opinion, concurrent findings of facts can only be disturbed if this Court finds any substantial question of law to be answered in favour of the appellant. In the present appeal no substantial question of law arises justifying interference in the concurrent findings of facts. Since, there is no substantial question of law which requires to be framed and requires consideration of this Court and as such there is no merit in this appeal and the same is dismissed with

costs throughout.

