IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2210 of 2011 (O&M)
Date of Decision: January 16, 2015

Ramesh Kumar & others

...Appellants

Versus

Dilraj Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajesh Narang, Advocate,
for the appellants.

Mr.O.P.Kamboj, Advocate,
for respondent No.1.

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AMIT RAWAL, J. (Oral)

This Regular Second Appeal at the instance of the appellant-defendants is directed against the judgments of both the Courts below, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 13.6.1997 in respect of the suit property, has been decreed.

Learned counsel appearing on behalf of the appellant-defendants has contended that both the Courts below have committed illegality and perversity in decreeing the suit as respondent-plaintiff failed to prove the readiness and willingness, much less, liquid cash at the time of the execution and registration of the sale deed.

Mr.O.P.Kamboj, learned counsel appearing on behalf of the respondent-plaintiff submits that the suit for specific performance had been instituted within the period of limitation and the execution of the agreement to sell has been proved through the testimony of attesting witnesses, i.e., PW-2 Inderjit Singh and PW-3 Bhagwant Singh. Both the parties to the lis stated to have marked their presence before the office of the Sub-Registrar on 17.11.1997, i.e., the target date for execution and registration of the sale deed. The application of the plaintiff is Ex.P1, whereas that of the defendants is Ex.D1.

In rebuttal, Mr.Rajesh Narang, learned counsel appearing on behalf of the appellant-defendants has argued that the respondent-plaintiff remained silent after 17.11.1997 till filing of the suit and, therefore, the Courts below ought not to have granted the discretionary relief as is envisaged under Section 20 of the Specific Relief Act.

I have heard the learned counsel for the parties and appraised the impugned judgments of the Courts below and as well as the pleadings between the parties to the lis.

While dealing with the last contention of the counsel for the appellant-defendants, counsel for the respondent-plaintiff pointed out to paras 5, 7 and 8 of the plaint annexed as Annexure P-1. For the sake of brevity, paras 5, 7 and 8 of the plaint are extracted herein below:-

> "5. That after 17.11.97 the plaintiff many a times approached and requested the defendants to perform their part of the contract but no fruitful result came out.

7. That now the defendants have started threatening the plaintiff to alienate/transfer the suit land in favour of some body else. In case the defendants succeed in doing so, the plaintiff will suffer irreparable loss. So in order to keep the land intact and to avoid multiplicity of proceedings it shall be interest of justice to pass a decree for permanent injunction against the defendants restraining them from alienating/ transferring the suit land in favour of anybody else except the plaintiff.

8. That the defendants were repeatedly asked to perform their part of the contract and restrain from alienating the suit land in favour of anybody else but to no effect. Hence this suit."

In lieu of these categoric averments of the respondent-plaintiff, reply of the appellant-defendants to paras 5, 7 and 8 of the plaint is as under:-

"5. That para No.5 of the plaint is altogether wrong.

7. That para No.7 of the plaint is wrong. The answering defendants never threatened the plaintiff rather the plaintiff has not complied with the terms of agreement, so the plaintiff cannot seek restraint order against the defendants from further alienating the suit land nor the plaintiff has any right to file the suit.

8. That para No.8 of the plaint is wrong. It is mere pretext."

On perusal of the averments culled out in the written statement, it is evident that the appellant-defendants did not specifically deny the averments made in the corresponding paras of the plaint and in the absence of the specific denial, there is non-compliance of provisions of Order 8 Rule 5 CPC. The respondent-plaintiff has specifically pleaded that after the target date, he had been approaching the defendants to perform his part of the agreement, but the defendants failed to discharge the obligation, much less, performed his part of the agreement, which resulted into filing of the suit on 9.10.2000. Therefore, the aforementioned contention of the learned counsel appearing for the appellants is hereby repelled. Moreover, the defendants had put a specific question to the plaintiff and the plaintiff in cross-examination admitted that both the parties had approached the office of Sub Registrar for marking their presence, thus, there is no force in the argument/submission of the learned counsel for the appellant-defendants that the respondent-plaintiff had not been ready and willing to perform his part of the agreement.

The second contention that the plaintiff did not have the sufficient money/liquid cash at the time of the execution and registration of the sale deed is also devoid of merit in view of the Explanation (i) of Section 16-C of the Specific Relief Act. For the sake of brevity, Section 16-C read with Explanation (i) is extracted herein below:-

> **16. Personal bars to relief.-** Specific performance of a contract cannot be enforced in favour of a person-
>
> (a) and (b)
>
> xxx xxx xxx
>
> (c) who fails to aver and prove that he has performed or has

always been ready and willing to perform the essential terms of the contact which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.-For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court."

Moreover, it is settled proposition of law that unless and until directed, it is not necessary that the plaintiff may have liquidate cash at the time of the execution and registration of the sale deed. Reference is invited to **<u>Sukhbir Singh and others Versus Brij Pal Singh and others,</u> AIR 1996 SC 2510**. In the said case, Hon'ble Supreme Court, while dealing with the objection of the defendants, culled out a ratio decidendi by holding that it is not a condition that the respondent-plaintiffs should have ready cash with them. The fact that the office of Sub Registrar was attended for the purpose of the execution of the sale deed is a positive fact to prove that the plaintiffs had necessary funds to pass on consideration and had the required money for the payment for the registration.

In view of what has been observed above, there is no substance in the submissions of the learned counsel for the appellant-defendants. Both the Courts below have rendered a finding of fact and law based on appreciation of oral and documentary evidence. There is no illegality and perversity in the impugned judgments. No substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

January 16, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**