IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 1307 of 2012 (O&M)
Date of decision: 6.7.2015

Dr. Jhujjar Singh

.. Appellant

v.

Smt. Paramjit Kaur

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the appellant.

Mr. B. S. Jaswal, Advocate for the respondent.

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Rajesh Bindal J.

The plaintiff is before this court impugning the judgment and decree of the learned lower appellate court, vide which that of the trial court was reversed and the suit for possession by way of specific performance of agreement to sell, was dismissed.

Learned counsel for the appellant submitted that the agreement to sell pertaining to 10 marlas house was executed by the respondent in favour of the appellant on 20.12.2004 for a total sale consideration of ₹ 25,00,000/-. Earnest money of ₹ 3,00,000/- was paid. The last date for execution of the sale deed was 20.3.2005, which was extended to 6.4.2005 and another sum of ₹ 25,000/- were paid. On 6.4.2005, the appellant purchased stamp papers of ₹ 1,62,000/- and remained present before the Sub-Registrar throughout the day, however, the respondent did not come. The suit was filed on 22.4.2005, in which the respondent appeared on 9.5.2005. The appellant was ready and willing to get the sale deed registered on the date fixed, i.e., 6.4.2005. It is evident from the fact that he had purchased the stamp papers worth ₹ 1,62,000/-. Filing of suit nearly two weeks thereafter further fortifies this fact. He is still ready and willing to get the sale deed registered. Though the trial court had rightly decreed the suit, however, the learned lower appellate court, without there being any reason, reversed the judgment and decree of the trial court and dismissed the suit. Even if the appellant is not entitled to specific performance of agreement to sell, the earnest money cannot be forfeited.

On the other hand, learned counsel for the respondent submitted that a vendee has to be ready and willing to perform his part of the agreement on the last date, on the date of filing of the suit and subsequently as well. In the case in hand, in evidence produced on record by the appellant, it could not be established that on the date fixed for registration of the sale deed, the appellant was ready with balance sale consideration. In fact, he was not having even a single penny, as the witnesses produced by him stated that the money is with the appellant, whereas the appellant stated that it was with the witness. He further stated that he had brought a cheque of ₹ 10,00,000/-, which was also not from his account. This clearly establishes that the appellant, being not ready with balance sale consideration, he being a defaulter, cannot seek specific performance of agreement to sell and the earnest money given by him has rightly been forfeited in terms of the agreement.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, it is claimed by the appellant that the agreement to sell pertaining to 10 marlas house was executed by the respondent in favour of the appellant on 20.12.2004 for a total sale consideration of ₹ 25,00,000/-. Earnest money of ₹ 3,00,000/- was paid. The last date for execution of the sale deed was 20.3.2005, which was extended to 6.4.2005 and another sum of ₹ 25,000/- were paid. On 6.4.2005, the appellant purchased stamp papers of ₹ 1,62,000/- and remained present before the Sub-Registrar throughout the day, however, the respondent did not come. The suit was filed on 22.4.2005, in which the respondent appeared on 9.5.2005. The appellant-plaintiff in his affidavit in evidence stated that on 6.4.2005, he remained present throughout the day in the office of Sub-Registrar, Amritsar along with “sufficient funds” required for execution of the sale deed, but the respondent-defendant did not come to perform her part of the agreement. In his cross-examination, he stated that on 6.4.2005, Balwinder Singh, Sarpanch, was carrying ₹ 10,00,000/- in cash and the balance was brought by him in the form of cheque drawn on Indian Overseas Bank. The cheque was of ₹ 10,00,000/-. He further stated that the cheque was not from his own account but was issued by Dr. Jagir Singh, who was not present in the office of Sub-Registrar along with the appellant. The balance sale consideration was ₹ 21,75,000/-. Even as per the statement made by the appellant, he had ₹ 20,00,000/- available with him. Even though the cheque that too drawn from the account of third person may not be sufficient for getting the sale deed registered. In his cross-examination, PW2-Assa Singh admitted that on 6.4.2005, while he was present along with the appellant and other person in the office of Sub-Registrar, even respondent-Paramjit Kaur was also present, but she refused to get the sale deed registered, though the appellant was ready. He further stated that he did not know how much amount was brought by the appellant on 6.4.2005 for getting the sale deed registered. He further stated that on 6.4.2005, the appellant had not brought money, rather, Balwinder Singh had brought the money, but he did not know how much.

Balwinder Singh appeared as PW3. He also admitted in his cross-examination that respondent-Paramjit Kaur and her brother were present in tehsil complex, but did not contact the scribe for getting the sale deed prepared, however, they had appeared before the Sub Registrar. He did not state in his statement that he had brought ₹ 10,00,000/- in cash, as was stated by the appellant in his cross-examination. His stand was that the appellant was ready with balance sale consideration. The presence of the respondent in tehsil complex was not even denied by PW3-Balwinder Singh.

The respondent has also placed on record document (Ex. DX/2) marking her presence and mentioning therein that the sale deed could not be registered as the balance sale consideration was not available with the appellant.

The plea of the appellant that the mere fact that he filed the suit nearly within two weeks from the date fixed for registration of the sale deed and had also purchased stamp papers worth ₹ 1,62,000/- raises a presumption in favour of the appellant that he was ready and willing with balance sale consideration on the scheduled date is merely to be noticed and rejected, as the presumption cannot over-ride the evidence. As discussed above, there is ample evidence on record to suggest that on the date fixed for registration of the sale-deed, the appellant was not ready with balance sale consideration, hence, in terms of the condition laid down in the agreement to sell, the same stood cancelled and as a result, the earnest money was rightly forfeited.

In view of the aforesaid material on record, in my opinion, there is no illegality in the judgment of the learned lower appellate court. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

6.7.2015
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