

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1370 of 2012 (O&M)
Date of Decision: July 27, 2015

Sardul Singh and another

...Appellants

Versus

Pardeep Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manish Kumar Singla, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-plaintiffs Sardul Singh and Mohinder Singh have filed this regular second appeal against respondent-defendant/counter claimant Pardeep Kumar, challenging the impugned judgment and decree dated 10.02.2011 passed by learned Addl. Civil Judge (Senior Division) Mansa, vide which the suit filed by the plaintiffs for permanent injunction was dismissed and counter claim for specific performance was decreed and also the judgment and decree dated 29.11.2011 passed by learned Addl. District Judge, Mansa, vide which the appeal filed by the plaintiffs-appellants was dismissed.

The brief facts of the case are that plaintiffs-appellants Sardul Singh and Mohinder Singh filed a suit against defendant Pardeep Kumar, for permanent injunction, stating therein that land

measuring 31 kanals 6 marlas was owned and possessed by Jugraj Singh. The plaintiffs agreed with Jugraj Singh to purchase the suit property. The plaintiffs then agreed with the defendants to sell the suit property vide agreement dated 09.02.2006 @ ₹7.5 lacs per acre by receiving earnest money of ₹5 lacs to execute the sale deed on or before 31.05.2006. It is further the case that plaintiffs have always been ready and willing to perform their part of agreement to sell dated 09.02.2006 but the defendant has never been ready and willing to perform his part of the agreement to sell. The plaintiffs along with original owners of the suit property came on 31.05.2006 to execute the sale deed. The earnest amount paid by the defendant has been forfeited in favour of the plaintiffs. The defendants instead of making the payment of the remaining sale price to get the sale deed of the said property executed in his favour, intended to harass the plaintiffs through the police to get some documents executed from the plaintiffs in his favour for which the defendant has no right to do so.

Notice of the suit was given to the defendant, who filed counter claim for possession of the suit property by way of specific performance of agreement to sell dated 09.02.2006 or in the alternative for recovery of ₹10 lacs (₹5 lacs as earnest money and ₹5 lacs as damages) from the plaintiffs. The execution of the agreement, receipt of earnest money, date fixed for execution of the sale deed, are the admitted facts. It is further stated that defendant is still ready and willing to perform his part of the contract but plaintiffs are not ready and willing to perform their part of the contract. The defendant,

as per the terms of the agreement, remained present on 31.05.2006 along with balance sale consideration for getting the sale deed of the property executed in his favour but the plaintiffs did not turn up. The defendant ultimately got his presence marked by moving application before Sub-Registrar.

After framing the issues and after going through the evidence led by the parties, learned Addl. Civil Judge (Senior Division) Mansa, dismissed the suit of the plaintiffs vide judgment and decree dated 10.02.2011 and decreed counter claim of the defendant. An appeal was filed by the appellants-plaintiffs, which was also dismissed by learned Addl. District Judge, Mansa vide judgment and decree dated 29.11.2011.

Aggrieved from the above-said judgments and decrees passed by the Courts below, present regular second appeal has been filed by the appellants-plaintiffs.

At the time of arguments, learned counsel for the appellants argued that the findings given by the Courts below are incorrect, not as per evidence and the same are liable to be set aside.

I have heard learned counsel for the appellants and have gone through the record.

The perusal of the record shows that the defendant has pleaded in the written statement that he always remained ready and willing and is still ready and willing to perform his part of the contract. The defendant has also appeared into the witness box as DW-2 and has proved the agreement to sell dated 09.02.2006 Ex.D1, application

Ex.D2, copy of sale deed dated 30.10.2006 Ex.D3. The defendant also brought jamabandi, mutation etc. on record. The filing of the counter claim by the defendant also shows that defendant remained ready and willing to perform his part of the contract. It is also discussed by the Courts below that defendant filed application Ex.D2 before the Sub Registrar on 31.05.2006 to prove that he remained present with the balance sale consideration etc. to execute the sale deed but the plaintiffs have not produced any evidence to prove that they remained present on 31.05.2006 before the Sub Registrar. The pleading of the plaintiffs that earnest money has been forfeited, also shows that plaintiffs were not ready and willing to perform their part of the contract.

The execution of the agreement dated 09.02.2006 is admitted fact. Receiving of ₹5 lacs earnest money by the plaintiff, is also admitted fact. There is no dispute that the sale deed was to be executed on 31.05.2006. There is also no dispute regarding the terms and conditions of the agreement. The only point is whether plaintiffs remained ready and willing to perform their part of the contract or not. The pleading of the plaintiffs that earnest money has been forfeited itself shows that plaintiffs were not ready and willing to perform their part of the contract and the fact that plaintiffs have not produced any record that they were present on 31.05.2006 in the office of Sub Registrar, also creates doubt in their case, as oral statement to that extent is not supported by any document. On the other hand, the defendant remained ready and willing to perform his part of the

contract. He also remained present in the office of Sub Registrar, which is duly proved from the application Ex.D2. By filing the counter claim, the defendant also proved that he is still ready and willing to perform his part of the contract.

The findings given by the Courts below are correct and as per evidence. There is nothing on the record that any evidence has been misread by the Courts below. There is also nothing on the record to show that judgments and decrees passed by the Courts below are perverse or against the evidence.

In view of the above discussion, I find that the findings given by the Courts below are correct, as per law and evidence and do not require any interference from this Court. The judgments and decrees passed by the Courts below are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE