

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.3658 of 2012 (O&M)
Date of Decision: October 29, 2015.**

Ajaib Singh

.....APPELLANT(s).

VERSUS

Gurmail Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.D. Sharma, Advocate
for the appellant (s).

Mr. Malkiat Singh, Advocate
for the respondents.

SURINDER GUPTA, J.

This is regular second appeal against the concurrent judgment of Courts below whereby the suit filed by respondents-plaintiffs Gurmail Singh and Gurmit Singh seeking relief of specific performance of the agreement to sell dated 25.10.2005 was decreed.

2. It is admitted case of the parties that vide agreement dated 25.10.2005, defendant-appellant Ajaib Singh agreed to sell the suit land measuring 16 kanals to respondents-plaintiffs for a consideration of ₹8,30,000/- i.e. at the rate of ₹4,15,000/- per acre and received ₹2 lacs as earnest money through cheque bearing No.21860 dated 25.10.2005. The possession of the land in dispute was also delivered to the respondents-

plaintiffs on 25.10.2005 itself. The date for execution and registration of the sale deed was fixed as 30.04.2006, which was extended to 03.05.2006 on 01.05.2006 and another amount of ₹2,80,000/- was paid to the appellant-defendant.

3. Plaintiffs have alleged that they purchased required stamp papers worth ₹72,000/- before 01.05.2006 to get the sale deed executed but later on, on the request of defendant, the time for execution of the sale deed was extended from 03.05.2006 to 20.05.2006. The plaintiffs had always been ready and willing to perform their part of the agreement and are still ready and willing but the appellant-defendant has committed default in performance of his part of the agreement. On 20.05.2006, it was Saturday and on 21.05.2006 was Sunday and the office of Sub Registrar, Nurmahal was closed. On 22.05.2006, plaintiffs along with sufficient amount in hand and stamp papers worth ₹72,000/- remained present in the office of Sub Registrar, Nurmahal from 09.00 A.M. to 5.00 P.M. for the purpose of getting the sale deed executed but the defendant evaded to perform his part of the agreement. Plaintiffs moved application on 22.05.2006 before the Sub Registrar, Nurmahal for marking his presence but the same was returned to the plaintiffs on the ground that there was no provision for marking the presence. The defendant was also requested to execute the sale deed but he refused.

4. The appellant-defendant, while admitting the execution of the agreement to sell and receipt of earnest money, has alleged that on 22.05.2006, plaintiffs were not ready and willing to perform their part of

contract and asked him to extend the date to which he did not agree. He

asked the plaintiffs to arrange the money on the same day. At this, plaintiffs went from the spot to arrange the money and did not return till late hours. The defendant appeared before the Sub Registrar and got his affidavit attested to get his presence marked in his office. In the evening the defendant took possession of the suit land from the plaintiffs without their consent and now he is in possession of the suit land.

5. The suit was filed on 25.05.2006 i.e. 3 days after the date fixed for execution and registration of the sale deed. Both the Courts below on appraisal of evidence have reached the conclusion that the plaintiffs have been able to prove their readiness and willingness to perform their part of the agreement, as such, are entitled to seek specific performance of the agreement to sell.

6. I have heard learned counsel for the parties and have gone through the paper book, record and judgments of the Courts below with their assistance.

7. Learned counsel for the appellant-defendant has argued that the appellant-defendant was present in the office of Sub Registrar on 22.05.2006. On that day, he had no other function but to sign the sale deed and receive the balance sale consideration. The lapse was on the part of the plaintiffs that they did not have the ready money with them. As per the plaintiffs, they have taken loan from Sohan Singh and Kuldip Singh and also withdrawn some amount from the account of their parents but these facts have not been proved by leading any evidence. Learned lower Courts while observing that the lapse was on the part of appellant-defendant, have taken

was got redeemed on 01.05.2006 and an application was moved before the first Appellate Court to produce that '*No Dues Certificate*' issued by the bank, which was declined. Both the Courts below have wrongly taken note of the fact that plaintiffs have also appeared before the Sub Registrar on 22.05.2006 and moved an application before the Sub Registrar which shows that they were ready and willing to perform their part of the contract.

8. This fact is admitted that the appellant had entered into an agreement to sell two killas (16 kanals) of land for ₹8,30,000/- and received ₹4,80,000/- out of sale consideration. Initially, the date for execution and registration of the sale deed was fixed as 30.04.2006 but on 01.05.2006, appellant-defendant received ₹2,80,000/- and extended the date for execution of the sale deed to 03.05.2006. It is evident from the evidence on record that the appellant-defendant was having something else in his mind. On 20.04.2006, he filed a suit seeking relief of permanent injunction against father of plaintiffs. The copy of the plaint Ex.P7 shows that he concealed the factum of agreement to sell executed by him and the earnest money received. He also did not disclose that the possession of the suit land had already been delivered. However, in that suit, compromise was effected on 2.5.2006 and under the compromise, he admitted the execution of the agreement dated 25.10.2005 and another agreement dated 07.11.2005. He also admitted possession of the plaintiffs over the suit land and undertook to execute the sale deed in their favour. That suit was dismissed as withdrawn. The filing of that suit shows that the appellant-defendant had accepted the agreement and its execution and receipt of the earnest money of ₹4,80,000/-.

for the registration of the sale deed were purchased by the plaintiffs on 01.05.2006. They had appeared before the Sub Registrar, Nurmahal and moved the application Ex.P4 stating therein that they have ready money to get the sale deed as per the agreement to sell dated 25.10.2005 and have also purchased the required stamp papers but the appellant-defendant had not turned up. They have also sworn affidavit Ex.P5 before the Sub Registrar on the same day. In the register of the Sub Registrar Ex.DW3/8, there is an entry of the affidavit of respondents-plaintiffs below the entry of appellant-defendant, which show that respondents-plaintiffs were present before the Sub Registrar even after the appellant-defendant.

10. The argument of learned counsel for the appellant-defendant that the respondents-plaintiffs have not examined the persons from whom they have taken the loan and bank record of their parents from which they had withdrawn money, has been rightly discarded by the Courts below. The plaintiffs had appeared before the sub Registrar with the ready money. They had purchased the stamp papers worth ₹72,000/-. More than 50% of the sale price had already been paid to the appellant-defendant. They had purchased the stamp papers worth ₹10,450/- for filing suit on 24.05.2006 and filed the suit on 25.05.2006. The appellant-defendant appeared before learned Civil Judge (Senior Division) on 06.06.2006. Even on that day, he could call upon the plaintiffs to get the sale deed executed. Admittedly, no notice was given by the appellant-defendant to the plaintiffs intimating him that agreement stood revoked due to lapse on their part and earnest money stood forfeited.

11. In the facts and circumstances as discussed above, the production of *No Dues Certificate* dated 01.05.2006 by the appellant-

defendant would not have made any difference. The facts and circumstances discussed above have rightly weighed before the Courts below while allowing the relief of specific performance of agreement to sell in favour of respondents-plaintiffs.

12. On perusal of the paper book, lower Court record and judgments of the Courts below, I find no illegality or infirmity therein calling for any interference.

13. No substantial question of law requiring determination arises in this appeal, which has no merits.

14. Dismissed.

October 29, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE