

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.924 of 2012 (O&M)

.....

Date of decision:8.5.2015

Hazari Lal and another

.....Appellants

v.

Raja Ram and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Mittal, Advocate for the appellants.

Mr. S.K. Yadav, Advocate for respondent No.1.

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Inderjit Singh, J.

This regular second appeal has been filed by Hazari Lal and Dinesh-appellants/defendants against Raja Ram-respondent-plaintiff and Rajesh and others-proforma respondents challenging the judgment and decree dated 22.11.2011 passed by learned Additional District Judge, Narnaul, allowing the appeal filed by the plaintiff against the judgment and decree dated 30.7.2008 passed by the learned Civil Judge (Junior Division), Mahendergarh, vide which suit filed by Raja Ram against Hoshyar Singh, Lekh Ram and Hazari Lal-defendants has been dismissed.

The brief facts of the case are that Raja Ram-plaintiff filed a suit against Hoshyar Singh, Lekh Ram and Hazari Lal-defendants for specific performance of contract/agreement to sell dated 20.11.2001. The

main case of the plaintiff is that the defendants entered into agreement to sell dated 20.11.2001 for sale consideration of ₹1 Lac and ₹15,000/- were paid as earnest money and sale deed was to be executed on 31.12.2001. Subsequently, the time for execution of sale deed was extended till 15.6.2002 for which fresh agreement was executed. It is alleged that 15.6.2002 being Saturday, the plaintiff requested the defendants to execute the sale deed on 14.6.2002, but failed to do so. On 17.6.2002, the defendant was again requested, but he did not turn-up for executing the sale deed, while the plaintiff stayed at the office of Sub Registrar, Mahendergarh from 9.00 a.m. to 5.00 p.m. and got his attendance marked there.

On the other hand, the case of defendants No.1 and 2 in the written statement is that they are owners of the suit land and they had executed agreement to sell on 20.11.2001 on terms and conditions mentioned in the plaint. It is the case of the defendants that they never avoided the execution of sale deed, but due to order of stay of alienation by the High Court in some other case, sale deed was not executed. It is also stated that rather the plaintiff was not ready and willing to perform his part of contract and, thus, sale deed could not be executed.

The learned Civil Judge (Junior Division), Mahendergarh, after discussing the evidence, dismissed the suit of the plaintiff for specific performance and in the alternative the defendant was directed to pay the earnest money of ₹15,000/- along with interest @6% per annum from the date of execution of agreement to sell dated 20.11.2001 till its actual recovery.

Aggrieved against this judgment and decree, the plaintiff filed appeal before the District Judge, Narnaul, and the learned Additional District Judge, Narnaul vide judgment and decree dated 22.11.2011 set aside the judgment and decree passed by the learned Civil Judge (Junior Division), Mahendergarh and decreed the suit of the plaintiff for specific performance. It was also directed that the vendor will execute the sale deed within a period of one month from vacation of stay order by the High Court in RSA No.2654 of 2001 and as the appellant has also got possession, therefore, it was directed that the appellant shall deposit the remaining sale consideration in any bank in FDR to be released to the vendee along with interest at the time of execution of sale deed. Aggrieved against this judgment and decree passed by the learned Additional District Judge, Narnaul, the present regular second appeal has been filed.

Notice of motion has been issued in this case. Respondent No.1 has put in appearance through Shri S.K. Yadav, Advocate and contested this appeal.

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

At the time of arguments, learned counsel for the appellants argued that firstly the fate of this case is dependent on the decision of the RSA already pending regarding another case. He further argued that the plaintiff was not ready and willing to perform his part of the contract, therefore, the suit for specific performance of contract cannot be decreed. He further argued that the agreement in question was to be performed on

contingency. Therefore, specific performance cannot be allowed at this stage.

From the record, I find that the execution of the agreement to sell has been admitted by the defendants in the written statement. The receiving of earnest money of ₹15,000/-, the date of extension of the period for execution of sale deed and the terms and conditions in the agreement are not disputed. Even in the written statement, defendants No.1 and 2 have stated that the sale deed could not be executed due to stay of alienation of property by this Court in some other case, i.e. RSA pending before this Court, which means that the defendants were ready to execute the sale deed, but could not do so due to stay granted by this Court. At the same time, it is also stated that the plaintiff was not ready and willing to perform his part of the contract. A perusal of the record shows that the plaintiff examined witnesses and the oral statements of the plaintiff are duly supported by the documentary evidence i.e. agreement to sell, the extension application for putting appearance before the Sub Registrar, affidavit attested by the Sub Registrar, legal notice and Jamabandi etc.

On the other hand, the defendants have not led any evidence. The plaintiff has stated in his statement that he is ready and willing to perform his part of the contract and this statement remained unrebutted on the file. There is nothing on the record that the plaintiff was not ready and willing at any stage of the case. Further more, giving of legal notice, filing of the suit, getting marked his presence before the Sub Registrar on the due date, all these documents corroborate the version of the plaintiff that he was

ready and willing and still ready and willing to perform his part of the contract. As regards, the fact that the fate of this case depends upon the decision of the RSA where the stay regarding alienation has been passed, the learned Additional District Judge in its judgment and decree has taken note of this fact and the suit has been decreed for specific performance to execute the sale deed after the vacation of the stay order within one month. Further, I find that there is nothing in the written statement that this agreement has to be performed on happening of contingency. Otherwise also, this plea has not been taken before the learned Courts below and has been raised for the first time before this Court, which fact has been admitted by the learned counsel for the appellants.

Therefore, from the above discussion, I find that the findings recorded by the learned Additional District Judge, Narnaul, in the judgment and decree dated 22.11.2011 are correct and as per law which do not require any interference from this Court and the same are upheld. Otherwise also, no question of law, much less any substantial question of law arises in the present regular second appeal.

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

May 8, 2015.

(Inderjit Singh)
Judge

hsp