

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1554 of 2013 (O&M)

Date of Decision.14.09.2015

Maninderbir Singh

.....Appellant

Versus

Harvinder Singh

.....Respondent

Present: Mr. Sandeep Singal, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J.(ORAL)

1. Although, there had been a response elicited through the Court's direction on 28.04.2015 that the appellant would be willing to restrict his claim to ₹ 20,000/- with interest, the counsel seeks for consideration of his case on merits.

2. The plaintiff whose suit for specific performance had been declined by the trial Court and affirmed the appellate Court is the appellant before this Court.

3. The agreement of sale was executed on 20.10.1998 for consideration of ₹ 1,46,250/- and as per the recital an amount of ₹ 20,000/- had been paid as advance and the balance was to be paid on 30.04.1999. The plaintiff sought to contend that he was present at the Registrar's office and got his presence noted and filed at the time of trial a copy of the affidavit. The defendant contended that the plaintiff was a property dealer and he had been only entering into agreement and

looked for purchaser to fulfill the obligations and he was never interested in purchasing the property. The defendant would contend that he was actually present at the Registrar's office on the day when the document was to be written but only the plaintiff was not present. He got his presence noted and at the trial, he produced an affidavit and also notary public to get noticed his presence to vouch for the truth of his contention that he was present at that time. The defendant also pointed out that the plaintiff had originally filed a suit only for mandatory injunction making a notional valuation of the property and was literally evading the duty to pay the full court fee and he took his own time till he filed an application for amending the prayer for specific performance and sought for payment of the deficit court fee, valuation of which was to be made on the basis of the sale consideration mentioned in the agreement. The suit was changed as one of specific performance after the deficit court fee was made good on 02.06.2010 and the amendment was also ordered.

4. The trial Court cited three reasons as to why the plaintiff cannot have the benefit of specific performance and that the amount which was paid at the time agreement was treated to be earnest and liable for forfeiture when the plaintiff had not proved his readiness and willingness. One, it stated that the affidavit of presence was not genuine and the original had not been filed and even a person who was said to be a witness to his presence was not examined in Court. Two, the plaintiff was a property dealer and he was not interested in purchasing the property and he was only looking for an excuse for not complying with the terms since he had not got a purchaser to purchase

the property. Three, unwillingness to initiate immediately an action for specific performance was manifest by his conduct in filing a suit for mandatory injunction with a notional valuation and was applying for amendment only subsequently. The Court found that the plaintiff's conduct showed that he had never been ready and willing. I do not think that there is any error either by the trial Court or the Appellate Court in drawing appropriate inference from the conduct of the plaintiff. I will make no intervention and dismiss the second appeal as involving no substantial question of law for consideration.

(K. KANNAN)
JUDGE

September 14, 2015
Pankaj*