

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

**Regular Second Appeal No.3541 of 2013 (O&M)
Date of Decision: October 06, 2015.**

Vipin Kumar

.....APPELLANT(s).

VERSUS

Hira Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Saini, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This appeal has been filed by Vipin Kumar, appellant-plaintiff against the judgment and decree passed by Additional District Judge, Ludhiana, whereby the appeal filed by respondent-defendant was partly accepted. The relief of specific performance of the agreement to sell dated 10.05.1996 was declined and alternate relief of recovery of ₹30,000/- with pendente lite and future interest, was allowed.

Case of the plaintiff, in brief, is that the defendant vide agreement dated 10.05.1996 agreed to sell the land measuring 3 kanals 0 marla to plaintiff for a sale consideration of ₹40,000/- and received ₹20,000/- as earnest money. The date for execution and registration of the sale deed was fixed as 15.07.1997.

Vide endorsement on the back of agreement on 13.07.1997, the

date for execution and registration of the sale deed was extended from 15.07.1997 to 15.01.2000 and the defendant received another sum of ₹10,000/- from the plaintiff. On 15.01.2000, the plaintiff remained present in the office of Sub Registrar, Machhiwara but the defendant did not turn up. The suit seeking relief of specific performance was filed on 15.01.2003 i.e. about six and half years after the date of agreement and about three years after the extended date of 15.01.2000.

Vide judgment dated 22.07.2011, learned lower court decreed the suit of the plaintiff for specific performance and the defendant was directed to execute the sale deed in favour of plaintiff within one month from the date of deposit of balance sale consideration by the plaintiff. The defendant was also restrained from alienating the suit property to anybody else except the plaintiff.

Aggrieved by the said judgment and decree, the defendant filed the appeal. The factors which weighed before the first Appellate Court while allowing the alternate relief of recovery, are as follows:-

(i) The plaintiff had not produced any evidence that he had appeared before the office of Sub Registrar on 15.01.2000 to perform his part of agreement. There was neither any affidavit got attested by the plaintiff from the Sub Registrar/Executive Magistrate nor any application was moved to the Sub Registrar to mark his presence in his office on 15.01.2000.

(ii) The cause of action accrued to the plaintiff to file the suit on 15.01.2000 but he waited for another three years and filed the suit only on

last day of limitation i.e. 15.01.2003.

(iii) The conduct of the plaintiff shows that he was not interested in getting the disputed property purchased from the defendant despite the fact that major amount i.e. ₹30,000/- out of total sale consideration of ₹40,000/- had been paid.

(iv) Despite the payment of major portion of the sale consideration, the possession of the suit land was not taken by the plaintiff, which is against the conduct of a prudent person.

(v) No pragmatic person would hand over the amount of ₹30,000/- out of total sale consideration of ₹40,000/- to the vendor and then wait for 7 years to knock the doors of the Court to seek the relief of specific performance of the agreement.

Learned counsel for the appellant has argued that the suit was filed within limitation, as such, the first Appellate Court has committed grave error of law and fact while declining the relief of specific performance of the agreement to sell.

From the facts discussed above, it is apparent that the appellant-plaintiff was never eager or intended to seek the specific performance of the agreement dated 10.05.1996. The reasons given by the first Appellate Court are explicit and clearly show that the appellant was never serious in getting the sale deed executed in his favour. Firstly, a person who is eager to purchase the land, will not wait for 6/7 long years for execution and registration of the sale deed in his favour. He would not loose the opportunity to prove that he was ready and willing to perform his part of contract and further that on the date fixed for execution and registration of the sale deed, he had appeared before the Sub Registrar with ready money

and got his presence marked there.

The fact that even after the accrual of the date fixed for seeking execution and registration of the sale deed, the plaintiff remained silent for another three years, was sufficient reason for the first Appellate Court to decline him the relief of specific performance of the agreement.

I find no infirmity of law or fact in the discretion exercised by the Court below while allowing the alternate relief to the plaintiff for recovery of ₹30,000/- along with pendente lite and future interest.

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

October 06, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE