

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

**RSA No. 3626 of 2013 (O&M)
Date of decision: 17.09.2015**

Om Dutt

..Appellant

Versus

Surjit Kumar & Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rupinder Khosla, Sr. Advocate with
Mr. Aman Sharma, Advocate
for the appellant.

Mr. S. D. Sharma, Sr. Advocate with
Mr. Anupam Sharma, Advocate
for the respondents.

AMIT RAWAL, J.

Challenge in the present petition is to the impugned judgments and decrees of the Courts below, whereby, the suit for possession by way of specific performance of Shop-cum-Office No. 57, situated in Sector 29-D, Chandigarh, has been decreed and defendant has been directed to execute the sale deed within two months, on receipt of balance sale consideration.

Mr. Rupinder Khosla, learned Sr. Advocate assisted by Mr. Aman Sharma on behalf of appellant/defendant submits that the Courts below have committed illgality and perversity in decreeing the suit, for the reasons that readiness and willingness on the part of plaintiff/respondents was conspicuously wanting. He submits that though the appellant-defendant admitted the agreement to sell dated 10.07.1996 (Ex.P19) of Shop-cum-Flat, much less, receipt of earnest money of ₹ 6,00,000/-, but rest of the averments of the suit with

regard to payment of ₹ 16,80,000/- or something more was categorically denied, and payment of rest of the amount as alleged to have paid was specifically challenged. Target date of execution of sale deed was 31.12.1996 and the plaintiff/respondents did not appear before the Sub Registrar for performing their part of the contract. In view of such situation, vide notice dated 13.01.1997, appellant/defendant cancelled the agreement. But respondent-plaintiffs in plaint did not make a reference of the receipt in the notice dated 13.01.1997 (Ex.D-1). Even the attesting witness to the receipt was none else, but one of the relative of respondent-plaintiffs. He further submits that even a counter claim claiming possession of First and Second Floor, which was handed over to the plaintiff/respondents, as per terms and conditions of agreement to sell, has erroneously been disallowed, therefore, following substantial questions of law arise for determination :-

- (i) Whether the respondent/plaintiffs were ready and willing to perform their part of contract or not?
- (ii) Whether the agreement to sell dated 10.7.1996 had been cancelled by virtue of legal notice dated 13.01.1997 (Ex. D1)?

Mr. S.D. Sharma, learned Sr. Advocate assisted by Mr. Anupam Sharma appearing on behalf of respondent/plaintiffs submits, that as per the terms and conditions of the agreement the defendant-appellant was to obtain Income Tax Clearance Certificate and 'No Objection Certificate' from the Bank, as Shop-cum-Office

was mortgaged. Having not done so, the respondent-plaintiffs were left high and dry. Not only this, even after the expiry of dates 28.01.1997 and 9.2.1997 appellant-defendant had taken a sum of ₹1,00,000/- each, therefore, there is no illegality and perversity in the impugned judgments and decrees.

Mr. Khosla, in rebuttal, submits that in furtherance of the agreement to sell dated 10.07.1996, respondent-plaintiffs approached the defendant in first week of April, 1998 for execution and registration of the sale deed, therefore, readiness and willingness on behalf of the respondent-plaintiffs during all this period was conspicuously absent. Thus, submits that both the Courts below have committed illegality and perversity in exercising discretion under Section 20 of the Specific Relief Act.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

Appellant-defendant admitted the execution of the agreement to sell dated 10.07.1996 (Ex.P19), much less, receipt of ₹ 6 lacs. It has been specifically proved on record that despite having received the payment of ₹ 22.80 lacs out of the total sale consideration of ₹ 31,50,000/-, the appellant-defendant, yet failed to perform his part of the contract. From the perusal of paragraph 12 of the judgment of the lower Appellate Court, it is apparent that agreement, (Ex.P-24) executed between the parties, appellant-defendant handed over the vacant physical possession of first and second floor of the disputed property. Such an act shows that till

such time, the parties were ready and willing to perform their part vis-a-vis respective part/role in pursuance to the aforementioned agreement to sell.

It is also a matter of record that on the date of handing over the possession of first and second floor by the appellant-defendant, respondent-plaintiffs performed their part/role, such as payment of part of total sale consideration to the tune of ₹16.80 lacs. The Handwriting Expert examined by the appellant-defendant in cross-examination admitted that she had not taken the subsequent signatures for the purpose of comparison. In my view, the Handwriting Expert, thus, has not performed principal duty for comparison of the signatures. Whereas, on the other hand, as per the report of Handwriting Expert examined by the respondent-plaintiffs, the signatures on the receipts were found to be of the appellant-defendant. In cross-examination, nothing surfaced that receipts were not bearing the signatures of the defendant-appellant.

In view of what has been observed above, I do not find any illegality, much less, perversity, in the impugned judgments and decrees of the Courts below, which are based on appreciation of oral and documentary evidence, much less, substantial questions of law, noticed above, are answered in favour of the respondent-plaintiffs and against the appellant-defendant.

Accordingly, the appeal is dismissed.

September 17, 2015
savita

(AMIT RAWAL)
JUDGE