

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 10 of 2015
Date of decision : January 13 , 2015

Varinderjit Singh

..... Appellant

Versus

Inderjit Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J. S. Brar, Advocate
for the appellant.

Mr. G. S. Punia, Senior Advocate with
Mr. J. S. Dhaliwal, Advocate
for the respondent-caveator.

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?

Amit Rawal, J (oral).

The present Regular Second Appeal at the instance of the appellant, is directed against the impugned judgment and decree of the lower appellate Court dated 18.10.2014 whereby appeal of the respondent-defendant has been allowed and the judgment and decree dated 2.4.2014 whereby the suit of the appellant-plaintiff for specific performance of the agreement to sell dated 28.8.2006 for a plot measuring 550 sq.yards had been decreed.

The facts of the case as culled out from the pleadings of the parties to the *lis* are that admittedly both the plaintiff and defendant entered into an agreement to sell dated 28.8.2006 in

respect of the property having area of 550 sq.yard situated in Village Daad, Main Pakhowal Raod, Tehsil and District Ludhiana and in front of Main Pakhowal road 3 shops were constructed and gate had already been erected along with the passage. As per the agreement to sell, backside of the plot was also constructed and the property as per the agreement to sell was double storied. The total sale consideration for execution of the sale deed was ₹1,20,00,000/- and the respondent-defendant acknowledged the receipt of ₹20 lacs as earnest money. The target date for execution and registration of the sale deed was fixed as 30.4.2007. According to the averments made in the plaint, the appellant-plaintiff alleged that prior to the registration of the sale deed the defendant was required to get the property in question demarcated and remove encroachment and thereafter the vacant possession of the suit property to the appellant-plaintiff was to be handed over. The appellant-plaintiff pleaded that he was ready and willing to perform his part of the contract and approached the defendant several times prior to the last date settled for execution and registration of the sale deed but defendant did not bother to perform his part of agreement and postponed the matter on one pretext or other. Even a week prior to the date of execution and registration of the sale deed the appellant-plaintiff is stated to have approached the defendant and requested to perform his part of the contract and appear in the office of Sub Registrar, Ludhiana on 30.4.2007. As per the averments the respondent-defendant did not perform his part of the agreement. The appellant-plaintiff served a legal notice dated 31.3.2008 upon the respondent-defendant but

despite receipt of the notice failed to perform his part of the contract.

The respondent-defendant in response to the notice appeared and filed written statement and admitted execution of the agreement to sell with the plaintiff and as well as the total sale consideration. However, it was stated in the written statement that the original sale deed and latest jamabandis were shown to the plaintiff on 27.4.2007 and the defendant was ready to execute the sale deed but the appellant-plaintiff did not turn up to get the sale deed executed in his favour on 30.4.2007.

The appellant-plaintiff examined himself as PW-1 and brought on record the original agreement to sell as Ex.P-1, Legal notice Ex.P-2, postal receipt Ex.P-3 and copy of jamabandi for the year 2004-05 as Ex.P-4 in order to prove the execution of the agreement, though the agreement was admitted, examined marginal witness to the agreement to sell Harjit Singh as PW-2.

The respondent-defendant despite himself stepped into the witness box as DW-1 brought on record site plan Ex.D-1, evidence Ex.D-2 and Ex.D-3 purported to be executed for marking the presence before the Sub Registrar, Ludhiana and certified copies of jamabandis as Ex. D-4 to D-7. The trial court, after noticing that the appellant-plaintiff in cross examination had admitted that he had not marked his presence before the office of Sub Registrar on the date fixed for the execution and registration of the sale deed, besides admission that he did not have bank account nor remembered the bank account number of his bank, claimed the specific performance of the land, but in the agreement to sell the description of the

property was categorically described i.e. a double storied building, 3 shops having been constructed, over and above the gate having been fixed, decreed the suit of the appellant-plaintiff on the ground that the defendant neither filed any counter claim with regard to the cancellation of the agreement to sell nor forfeited the earnest money, much less gave any notice to the plaintiff with regard to the sale and thus formed an opinion that the appellant-plaintiff was ready and willing to perform his part of agreement.

As per the decree the appellant-plaintiff was directed to make the balance sale consideration within a period of 30 days from the date of the judgment and the defendant was directed to get the sale deed executed in favour of the plaintiff, on receipt of balance sale consideration and in case the plaintiff failed to pay the balance sale consideration within 30 days then the earnest money said to have been paid by the plaintiff would deem to be forfeited by the defendant and the suit would be dismissed automatically.

The respondent-defendant impugned the judgment and decree of the trial court by availing the statutory remedy under Section 96 of the Code of Civil Procedure. The lower appellate court after examining the case law as well as the conduct of the appellant-plaintiff with regard to the readiness and willingness i.e. whether the appellant-plaintiff averred and proved the ingredients of Section 16-C of the Specific Relief Act or not, much less, the admission of the plaintiff, of not appearing before Sub Registrar, accepted the appeal of the respondent-defendant and set aside the impugned judgment &

decree of the trial court.

The lower appellate court found that though the respondent-defendant marked his presence before the Sub Registrar and in this regard proved on record Ex.D-2 and Ex. D-3 whereas the appellant-plaintiff in his cross examination admitted that he did not appear before the Sub Registrar, much less did not mark his presence nor moved any application for marking his presence. The appellant-plaintiff thus filed the present appeal and impugned the judgment and decree of the lower appellate court.

Mr. J. S. Brar, learned counsel appearing on behalf of the appellant in support of his submissions stated that the presence of the appellant-plaintiff, much less marking his presence before the office of sub Registrar would be insignificant as the appellant-plaintiff had proved the ingredients of Section 16-C of the Specific Relief Act, in as much as, before filing of the suit on 8.5.2008 served a legal notice on 31.3.2008. He has further referred to explanation (i) of clause (c) of Section 16 to contend that it was not essential on the part of the plaintiff to unequivocally tender to the defendant or deposit in the court any money except when directed by the court. He further submitted that during the pendency of the appeal he has complied with the directions and deposited the balance sale consideration before the trial Court. He further contended that as per explanation (ii) of aforementioned clause (c) has not only averred but proved the readiness and willingness therefore the lower appellate court has committed illegality and perversity in declining the discretionary relief of Section 20 of the

Specific Relief Act which was granted by the trial court and therefore urged that the appeal involves the following substantial questions of law:-

- (i) Whether the plaintiff/appellant is entitled to possession by way of specific performance of agreement dated 28.8.2006?
- (ii) Whether the plaintiff/appellant was ready and willing to perform his part of the contract?

The respondent-defendant has filed a caveat and put in appearance through caveator Mr. G. S. Punia, Senior Advocate assisted by Mr. J. S. Dhaliwal, Advocate and has submitted that in compliance with the directions contained in judgment and decree of the lower appellate court the respondent-defendant has deposited a sum of ₹20 lacs along with interest which comes to ₹35 lacs.

I have heard learned counsel for the parties and perused the impugned judgment and decree. It is a settled proposition of law that the plaintiff has to aver and prove readiness and willingness to perform his part of the contract as from the date of execution of the agreement till the filing of the suit, during the pendency of the suit, till passing of the decree. In the instant case, the readiness and willingness on the part of the appellant-plaintiff evaporated when he did not appear before the sub Registrar on the target date i.e. 30.4.2007 whereas on the contrary the respondent-defendant appeared and marked his presence and proved the evidence vide Ex.D-2 and Ex.D-3. In the cross examination the

appellant-plaintiff unequivocally admitted that he did not come to the office of sub Registrar, much less submitted any application for marking his presence. The said act of the appellant-plaintiff do not prove continuous readiness from the date of the contract till the time of filing suit. In this regard reference is invited to the judgment in **Sita Ram Vs. Radhey Shyam 2007 (4) RCR (Civil) 533** the Hon'ble Supreme Court held that the basic principle behind Section 16(c) read with Explanation (ii) is that any person who seeks benefit of specific performance of contract must manifest that his conduct has been blemishless through out and entitled him the specific relief and the Court is to grant relief on the basis of conduct of the person seeking such relief and in case the plaintiff through pleadings as well as his conduct proves the aforementioned basic ingredients the plaintiff would be entitled to get relief and could not be denied the relief.

In the instant case the appellant-plaintiff had proved his conduct, but, breached the readiness and willingness by not calling upon the defendant to assist him in issuing of stamp papers required for registration of the sale deed as it is mandatory requirement of law that without the signatures of the vendor, stamp papers are not issued. The absence of the appellant-plaintiff in not appearing before the office of sub Registrar irresistibly proves that he was not ready and willing to perform his part of the contract. The reasons could be many for e.g. he may not be having sufficient money/cash or he may have some other intention. The respondent-defendant had categorically stated in the written statement that he had shown latest complete documents of ownership before the

execution and registration of sale deed but yet the appellant -plaintiff did not come forward to perform his part of agreement therefore the lower appellate court rightly declined the relief of specific performance by allowing the appeal of the respondent-defendant.

The findings rendered by the lower appellate court are based on fact and law being the la st court of law. There is no illegality and perversity in the finding rendered by the lower appellate court.

No substantial question of law arise for determination by this Court.

No other point has been urged.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 13, 2015
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