

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

**Regular Second Appeal No.1019 of 2015 (O&M)
Date of Decision: October 20, 2015.**

Rang Lal Malik

.....APPELLANT(s).

VERSUS

Ahemad Khan and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.K. Singal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal against the judgment passed by Civil Judge (Junior Division), Faridabad allowing alternate relief of recovery of ₹40,000/- with interest to the appellant-plaintiff and declining the relief of specific performance of the agreement dated 2.1.1992. The first appeal filed by the appellant-plaintiff was also dismissed by the Additional District Judge, Faridabad.

2. As per the case of the appellant-plaintiff, defendants agreed to sell the land measuring 1 kanal 7 marlas vide agreement dated 02.01.1992 for a consideration of ₹60,000/- and received a sum of ₹10,000/- as earnest money. Respondent-defendant No.3 Jabid was minor and it was agreed that the execution of the sale deed would take place within one month of obtaining permission to sell minor share by his natural guardian from the

Court.

3. On 10.05.1999, defendants needed more money and requested the plaintiff to pay ₹30,000/- which was paid against a receipt. The date for execution of the sale deed was fixed as 02.06.2002. Plaintiff was ready and willing to pay balance sale consideration for execution of the sale deed on 02.06.2002 and contacted the defendants, who expressed their inability and later kept on putting of the matter on one pretext or the other. Ultimately, the plaintiffs served a legal notice on 09.11.2004 under postal certificate calling upon the defendants to execute the sale deed within 15 days of the notice but of no avail.

4. Defendants No.1, 2 and 4 contested the claim of plaintiff inter-alia denying the execution of the agreement and receipt of any earnest money. It was also averred that they were not competent to sell share of defendant No.3, who was minor.

5. Defendant No.3 filed separate written statement contesting and controverting the claim of the plaintiff.

6. Learned Civil Judge (Junior Division), Faridabad declined the relief of specific performance to the plaintiff with the observations in para 17 as follows:-

“17. In the light of the aforesaid law, it was material for the plaintiff to show that he was ready and willingness to perform his part of the contract from the date of execution of agreement till filing of suit but no evidence has been adduced by him to show his readiness on the date fixed for execution of sale deed i.e. 2.6.2002 except for his self serving statement. He could have got

marked his presence before the Sub Registrar, Faridabad but no such evidence has been adduced by him. Further, he has failed to show his ready and willingness to perform his part of contract between the period from 2.6.2002 to 9.11.2004 when he got notice issued to the defendants i.e. for the period of nearly 2 years. In this regard, plaintiff has only made self serving statement. He has only claimed in his plaint that plaintiff contacted and requested defendant as mentioned in para no.6 of the plaint but no cogent evidence such as written letter or notice issued to defendants during the period 2.6.2002 to 9.11.2004 has been placed on record, particularly in the light of the fact that he got an agreement executed in writing from the defendant and also endorsement Ex.P3 was executed in writing. As such, it cannot be held that he was always ready and willing to perform his part of the contract as he failed to prove by leading cogent evidence that he was ready and willing to perform his part of the contract on the date fixed for execution of the sale deed i.e. 2.6.2002 and for the period from 2.6.2002 to 9.11.2004.”

It is not disputed that despite recital in the agreement that possession had been delivered to the plaintiff at the spot, the same is still with defendant and recital in the agreement in this regard was only a formality. However, applying the Principle of Unjust Enrichment, the defendants were directed to pay an amount of ₹40,000/- to the plaintiff along with interest @ 9% per annum from the date of institution of the suit till its realization.

7. The first Appellate Court affirmed the finding of learned Civil Judge (Junior Division) keeping in view the fact that the appellant-plaintiff

had remained silent after the execution of the agreement initially for a period of two years when he allegedly paid ₹30,000/- to the defendants. The guardian for the minor defendant no.3 was appointed vide order dated 13.06.1995 but the plaintiff took no steps for seeking execution of the sale deed.

8. Learned counsel for the appellant-plaintiff has argued that no date was fixed for execution of the sale deed, as such, the suit is within limitation. The onus as per the terms of the agreement was on the defendants to intimate the plaintiff that they had taken the required permission for execution of the sale deed. Plaintiff never came to know about taking permission from the Court and till 1999 he could not take any further steps. Relying on the observations in case *P.D'souza Vs. Shondriilo Naidu 2004(6) SCC 649*, counsel for the appellant-plaintiff has argued that when the vendor himself has sought extension of time for execution of the sale deed, he cannot be allowed to pray and contend that the vendee was not ready and willing. He has also relied on *Piru Vs. Fakir Chand 2006(3) PLR 411* to bring home the point that specific performance of agreement to sell filed on the last date of period of limitation does not defeat the right to seek relief of specific performance.

9. In this case, the appellant-plaintiff has filed suit seeking the relief of specific performance after a period of about 13 years of agreement. The Courts below have rightly declined the relief of specific performance of the agreement to sell in the facts and circumstances of the case. A person, who remained silent and sleeping over his right for such a long period,

reasons; firstly, there is no explanation for his silence for a period of about 7 years i.e. from 02.01.1992 to 10.05.1999, when he allegedly paid another sum of ₹30,000/-. During this period of about 7 years, he neither issued any notice or taken any steps calling upon the defendants to execute the sale deed. Secondly, even after 10.05.1999, he remained silent till 28.12.2004 when he filed the suit. Thirdly, there is no evidence that even on the date fixed for execution and registration of the sale deed i.e. 2.6.2002, he had appeared before the Sub Registrar, Faridabad. All this is indicative of the fact that agreement was not for the sale of land but for some other purpose well-known to the plaintiff. The above conclusion finds support from the fact that despite recital in the agreement, possession of the suit property was not delivered to the plaintiff and even after payment of major part of the sale consideration on 10.05.1999, he had not taken possession of the suit land.

10. In the citation *P.D'souza Vs. Shondrilo Naidu (supra)*, it was proved that extension of time for execution of the sale deed was sought by the defendant and the delay in filing the suit was not as enormous as in this case. I have also gone through the other citations referred by learned counsel for the appellant. The delay in filing the suit may not be a sole ground for declining the relief of specific performance but keeping in view all the facts and circumstances, the Court has to reach a conclusion as to whether this discretionary relief is to be allowed. It is well known fact that prices of immovable property have seen manifold increase in the last decade of 20th Century. This was particularly so with regard to the immovable property situated in a city like Faridabad, situated just near the capital of the country.

steep increase in the city. Though both the Courts below have not taken into consideration this fact but this is also a circumstance which weighs against the appellant-plaintiff. The observations in the other citations referred by learned counsel for the appellant-plaintiff are not applicable to the facts and circumstances of the case.

11. On perusal of the record and judgments of the Courts below, I find no factual or legal infirmity therein calling for any interference.

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

13. Dismissed.

October 20, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE