

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.1382 of 2015 (O&M)

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Date of decision:28.7.2015

Gian Chand Chhabra (Dead) through his LRs Raj Rani and others

.....Appellants

v.

Pawan Kumar Chadha and others

.....Respondents

.....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Bajaj, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by Gian Chand Chhabra (Dead) through his legal heirs Raj Rani, Manju & Sushil Chhabra and Dewan Chand Chhabra-appellants/defendants against Pawan Kumar Chadha and Vishal Chadha-respondents-plaintiffs and Ram Chand Chhabra, Daya Rani, Praveen Kumar and Savita-proforma respondents/defendants challenging the impugned judgment and decree dated 18.11.2014 passed by the learned Additional District Judge, Jalandhar, vide which the appeal filed by defendants-Gian Chand Chhabra and Dewan Chand Chhabra against the impugned judgment and decree dated 15.6.2010 passed by learned Civil Judge (Senior Division), Jalandhar, decreeing the suit of the plaintiffs, has been dismissed.

The brief facts of the case are that Pawan Kumar Chadha and Vishal Chadha-plaintiffs filed suit against Gian Chand Chhabra (since deceased) through LRs for possession by way of specific performance of agreement to sell dated 9.6.2004 executed by defendants No.1 to 6 with the plaintiffs for the sale of House No.103, Lajpat Nagar, Jalandhar City, measuring 17 Marlas and 126 sq. feet consisting of seven rooms, four kitchens, four bath rooms and verandah on ground floor and one room and verandah on first floor and for permanent injunction restraining defendants No.1 to 6 either themselves or through their assignees, agents, representatives, servants etc. from selling, alienating or mortgaging or transferring or delivering the possession to any body else or from damaging the suit property etc. As per the case of the plaintiffs, the defendants being owners of the property in dispute entered into an agreement to sell dated 9.6.2004 in favour of the plaintiffs with regard to the same for total sale consideration of ₹42,10,000/-. A sum of ₹4 Lacs has been paid by the plaintiffs to the defendants as earnest money and the sale deed was to be executed on or before 9.12.2004. The date for execution of sale deed was extended till 9.2.2005 with the consent of both the parties. On 9.2.2005, the plaintiffs went to the office of Sub Registrar, Jalandhar along with cheque of balance sale consideration and other expenses, but the defendants did not turn up and the plaintiffs got marked their presence in the office of Sub Registrar, Jalandhar, by moving an application. Even, the plaintiffs issued a notice dated 17.2.2005 calling upon the defendants to execute the sale deed, but the defendants failed to execute the sale deed.

Upon notice, the defendants appeared and filed their separate written statements. It is the case of the defendants that they are not the joint owners of the property in dispute. The property in dispute is exclusive owned by defendant No.1 along with his father. Execution of the alleged agreement dated 9.6.2004 is admitted, but the plaintiffs were not having sufficient balance sale consideration as such, the agreement to sell stood cancelled. In the written statement filed by defendants No.2, 3 and 5, they took similar preliminary objection. On merits, it is submitted that defendants No.1, 2 and 3 and late Des Raj were the joint owners of the suit property. After the death of Des Raj, his share has been inherited by defendant No.5. Execution of agreement to sell dated 9.6.2004 and total sale consideration has been admitted. The plaintiffs requested for extension of time for execution of sale deed as they could not arrange the money, but the defendants refused to extend the date and agreement to sell was cancelled. The defendants were ready to perform their part of contract, whereas the plaintiffs failed to perform their part of contract.

After framing the issues and after the parties led the evidence, the learned Civil Judge (Senior Division), Jalandhar, decreed the suit of the plaintiffs vide judgment and decree dated 15.6.2010. Aggrieved from this judgment and decree, defendants-Gian Chand Chhabra and Dewan Chand Chhabra filed an appeal before the District Judge, Jalandhar, which was also dismissed by the learned Additional District Judge, Jalandhar, vide judgment and decree dated 18.11.2014. Aggrieved from the judgments and decrees passed by the Courts below, the appellants-defendants have filed

this regular second appeal.

At the time of arguments, learned counsel for the appellants argued that the findings given by the Courts below are perverse and not as per evidence. The plaintiffs were not ready and willing to perform their part of the contract and the defendants have not extended the time for execution of sale deed. Therefore, he argued that both these judgments and decrees are liable to be set aside.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that the execution of the agreement to sell has been admitted. Receiving of earnest money is also admitted fact. As regards the fact that sale deed was to be executed on 9.12.2004, it is also admitted fact. There is also no dispute regarding legal notice given by the plaintiffs to the defendants on 17.2.2005. A perusal of the documents as well as the agreement in the facts and circumstances shows that there is extension of the date regarding the execution of the sale deed from 9.12.2004 to 9.2.2005 which was duly signed by the defendants. The plaintiffs have proved the agreement to sell as well as the extension by bringing the witnesses. Legal notice was served on 17.2.2005 and the suit has been filed on 11.4.2005 without any unnecessary delay. There is no cogent evidence on record to show that the plaintiffs were not ready and willing to perform their part of the contract and they were not ready with the balance sale consideration. Rather, the plaintiffs have also brought the evidence on record to show that there was sufficient amount in their account

on the date of the execution of the sale deed. The plaintiffs have also proved the cheque Ex.P.15 for ₹38,10,000/- for payment towards balance sale consideration. The agreement to sell is Ex.P.1 and endorsement on the back of agreement is Ex.P.1/A. Legal notice is Ex.P.2. The plaintiffs have also placed on record the affidavit Ex.P.6 of plaintiff Pawan Kumar Chadha and affidavit dated 9.2.2007 Ex.P.9 of Vishal Chadha submitted by them before the Executive Magistrate, Jalandhar in which they have shown their willingness to get the sale deed executed as per agreement dated 9.6.2004. All this evidence shows that the plaintiffs remained ready and willing and are still ready and willing to perform their part of contract. The findings of fact given by the Courts below are correct and as per law and do not require any interference from this Court. Nothing has been pointed out as to which of the evidence has been misread by the Courts below and as to how the findings given by the Courts below are perverse. The findings given by the Courts below are concurrent. The judgments and decrees passed by the Courts below are correct and as per law and evidence on record, which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Consequently, finding no merit in this regular second appeal, the same is dismissed.

July 28, 2015.

(Inderjit Singh)
Judge

hsp