

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 5090 of 2013 (O&M)
Date of decision: 29.6.2015

Dharam Singh and another

.. Appellants

v.

Ajit Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D. S. Pheruman, Advocate for the appellants.

...

Rajesh Bindal J.

The plaintiffs are before this court against concurrent findings of fact recorded by both the courts below, vide which the suit filed by them for specific performance of agreement to sell, was dismissed.

In the case in hand, the appellants filed the suit seeking specific performance of agreement to sell dated 24.4.2007. It was claimed that the land in question was agreed to be sold by the respondent/vendor to the appellants @ ₹ 1,08,50,000/- per acre. ₹ 40,00,000/- were paid as earnest money. Both the courts below dismissed the suit filed by the appellants. The execution of the agreement to sell is not in dispute. The appellants failed as they had not been able to prove their readiness and willingness to get the sale deed executed. The last date fixed for execution of the sale deed was 2.2.2008. As 2.2.2008 and 3.2.2008 were holidays, on 4.2.2008, the vendor remained present in the office of Sub Registrar and got his presence marked, however, the appellants-vendees did not come to get the sale deed registered. Thereafter, the vendor even got a notice dated 23.2.2008 issued to the vendees to get the sale deed registered. The same was sent by registered post as well as UPC. The postal receipts were duly proved on

record along with the notice. Despite this fact, the appellants failed to get the sale deed registered. Still further, the vendor filed a suit on 7.3.2008 for declaration that agreement to sell dated 24.4.2007 had become null and void on account of default by the vendees. The present appellants were represented in the aforesaid suit through their counsel on 26.3.2008. They sought number of opportunities to file written statement, but neither filed the written statement nor showed their willingness to get the sale deed executed. Instead of that, application was filed under order 7 Rule 11 CPC seeking rejection of plaint on the ground that *ad valorem* court fee was required to be affixed on the suit filed by the vendor. The respondent-vendor withdrew the suit on 12.8.2008. Even till that date, the appellants never thought of getting the sale deed registered. They filed the suit in question on 3.9.2008 seeking specific performance of agreement to sell. There is no pleading either in the plaint or in the affidavit that the appellants remained present in the office of Sub Registrar along with balance sale consideration on the stipulated date. They had not stated that they got their presence marked on that day by filing any application or affidavit. With this material on record, where intention of the appellants from the very beginning was not to get the sale deed registered, rather, to gain time, both the courts below have rightly concurrently found that the appellants were not ready and willing to get the sale deed registered as they were not ready with the balance sale consideration. The findings are pure and simple findings of fact giving rise to no question of law, much less a substantial question of law.

For the reasons mentioned above, the appeal is dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

29.6.2015
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