

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.1624 of 2015 (O&M)

.....

Date of decision:29.4.2015

Gurnam Singh and another

.....Appellants

v.

Baldev Raj

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sandeep Arora, Advocate for the appellants.

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Inderjit Singh, J.

Gurnam Singh and Tarsem Singh-appellants/defendants have filed this regular second appeal against Baldev Raj-respondent/plaintiff challenging the impugned judgment and decree dated 4.3.2015 passed by the learned District Judge, Pathankot allowing the appeal filed by Baldev Raj-plaintiff against the impugned judgment and decree dated 26.9.2013 passed by Civil Judge (Senior Division), Pathankot, vide which the suit filed by the plaintiff has been dismissed.

The brief facts of the case are that Baldev Raj-plaintiff filed suit against Tarsem Singh and Gurnam Singh-defendants for specific performance of the agreement to sell dated 20.2.2006 executed by the defendants in favour of the plaintiff for the sale of land measuring 17

Kanals 15 Marlas for total sale consideration of ₹12,32,500/-. The plaintiff had already paid a sum of ₹2 Lacs to the defendants as earnest money. The plaintiff also prayed for permanent injunction restraining the defendants from alienating the suit land and in the alternative also for recovery of ₹4 Lacs.

In brief, the case of the plaintiff is that the defendants executed the agreement to sell dated 20.2.2006 for sale of the suit land @₹5,60,000/- per acre and total sale consideration of ₹12,32,500/- and received ₹2 Lacs as earnest money. The sale deed was to be executed on or before 30.6.2006. On that day, the plaintiff remained present in Tehsil premises from 9.00 am to 5.00 p.m. with sufficient amount to meet the expenses for execution, but the defendants failed to turn up for registration of sale deed and as such the defendants have committed breach of the agreement.

On the other hand, the case of the defendants in the written statement is that the plaintiff himself did not come present in the office of Sub Registrar, Pathankot throughout the day on 30.6.2006 for getting the sale deed executed in his favour by the defendants though the defendants remained present in the office of Sub Registrar, Pathankot throughout the day and they got their presence marked from the office of Sub Registrar, Pathankot by executing affidavit duly sworn by them before the Executive Magistrate, Pathankot on the same day at about 5.00 p.m. in the evening on the stipulated date i.e. 30.6.2006. As such, the suit of the plaintiff is liable to be dismissed. It is also stated in the written statement that the earnest money paid by the plaintiff to the defendants stands forfeited as per the

terms and conditions of the agreement of sale.

Both the parties produced the evidence and the learned Civil Judge (Senior Division), Pathankot vide judgment and decree dated 26.9.2013, decided issue No.1 to the effect that the plaintiff was not ready and willing to perform his part of the contract. Therefore, the suit of the plaintiff was dismissed. An appeal was filed by the plaintiff in the Court of learned District Judge, Pathankot and vide judgment and decree dated 4.3.2015, the learned District Judge, Pathankot set aside the findings given by the learned Civil Judge (Senior Division), Pathankot and allowed the appeal and the suit of the plaintiff was decreed for specific performance of the agreement etc. Aggrieved against this judgment, the present regular second appeal has been filed by the appellants-defendants.

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

Learned counsel for the appellants at the time of arguments mainly argued that findings of the learned Civil Judge (Senior Division) are correct and as per law and the findings given by the learned District Judge are against the evidence and law. The plaintiff never remained ready and willing to perform his part of the contract, rather, the defendants were ready and willing to perform their part of the contract.

After hearing learned counsel for the appellants and going through the record, I find that first of all execution of agreement to sell is admitted fact between the parties. There is no dispute regarding the date of execution of the sale deed. There is also no dispute regarding the sale

consideration and payment of earnest money. As per the evidence on record, the plaintiff had also got marked his presence on 30.6.2006 by appearing before the Sub Registrar. The plaintiff had stated that he remained present in the Tehsil premises from 9.00 a.m. to 5.00 p.m. with sufficient amount to meet the expenses for execution, but the defendants failed to turn up for registration of sale deed and as such the defendants have committed breach of the agreement. The plaintiff has duly proved his affidavit Ex.P.2 vide which he also marked his presence before the Sub Registrar and the same bears serial No.944, whereas the defendants have also proved their affidavit before the Sub Registrar which bears serial No.940. The learned Civil Judge (Senior Division) in para 11 of the judgment has given the following findings:-

“The defendants have proved on record affidavit Ex.D.1 and they have marked their presence before Sub Registrar, Pathankot on the stipulated date for registration of the sale deed i.e. 30.6.2006. Now the plaintiff has also proved his affidavit Ex.P.2 vide which he also marked his presence before the Sub Registrar, but the same bears serial No.944 which clearly shows that presence has been got marked by the defendants prior to him because the affidavit of defendants bear serial No.940 and the plaintiff has also issued notice calling upon the defendants to get the sale deed executed Ex.P.5 after lapse of 2½ years which also shows lack on his part to perform his contract and time is essence of the contract as there is stipulated date i.e.

30.6.06 for getting the sale deed registered and after lapse of 30.6.06 readiness and willingness of the plaintiff to get the sale deed executed is meaningless.”

The learned District Judge, Pathankot after going through the evidence and appreciating the evidence in right perspective reached to the conclusion that merely the plaintiff's affidavit bears serial No.944 and the defendants' affidavit bears serial No.940 itself will not prove that the plaintiff was not ready and willing to perform his part of the agreement. Sending of notice Ex.P.5 by the plaintiff after one year and 8 months after the execution of the agreement will also, in no way, amount that the plaintiff was not ready and willing to perform his part of the agreement. Rather, sending of the notice by the plaintiff after the execution of the sale deed and filing of suit for specific performance of the agreement to sell will prove that the plaintiff remained ready and willing and is still ready and willing to perform his part of the contract. The finding of the learned Civil Judge (Senior Judge) that time was the essence of the agreement without discussing anything is also incorrect. In the agreement of immovable property generally time is not the essence of the contract. It is to be inferred from the agreement whether time was the essence of the agreement or not. A perusal of the agreement nowhere shows that time was made the essence of the agreement except fixing the date for the execution of the sale deed nothing is there in the agreement or in the evidence to show that time was essence of the contract. Further more, the learned District Judge has also discussed that there is no cross-examination to the witness on the point that

the plaintiff always remained ready and willing to perform his part of the agreement to sell but the defendants have refused.

Learned counsel for the appellants placed reliance on the judgment of Hon'ble Supreme Court in Umabai & Anr. v. Nilkanth Dhondiba Chavan (Dead) by LRs. & Anr., (2005) 6 SCC 243, in which it is held that for determining readiness and willingness, conduct of the parties should be seen and it must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in examination-in-chief would not suffice. I have gone through the law laid down in this judgment. The learned District Judge has correctly appreciated the evidence by holding that the plaintiff was ready and willing to perform his part of the contract by discussing all the attending circumstances. Therefore, the law laid down in this judgment is of no benefit to the appellants.

Learned counsel for the appellants also placed reliance on the judgment of Delhi High Court in Sushil Jain v. Meharban Singh and others, 2012 (131) DRJ 421. This judgment having distinguished facts will not apply to the facts of this case as in that case the plaintiff failed to establish his readiness and willingness or even his financial capacity to pay balance consideration, which are not the facts in the present case in hand. Therefore, this judgment is also of no benefit to the appellants.

Learned counsel further placed reliance on the judgment of Hon'ble Supreme Court in M/s J.P. Builders & Anr. v. A. Ramadas Rao & Anr., (Civil Appeal Nos.9821-9822 of 2010, decided on 22.11.2010) and of

High Court of Delhi in Surjit Singh Bhatia and others v. Tej Raj Singh Goel (HUF), (CS(OS) No.1447 of 2010 decided on 1.7.2014). I have gone through the law laid down in these judgments, which having distinguished facts will not apply in the present case.

Keeping in view the findings given by the learned District Judge in the judgment and decree dated 4.3.2015, I find that the same have been given while appreciating the evidence in right perspective and as per law. These findings are correct and as per law, which do not require any interference from this Court and the same are upheld. No question of law, much less any substantial question of law, arises in the present regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

April 29, 2015.

(Inderjit Singh)
Judge

hsp