

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.1640 of 2015 (O&M)
Date of Decision: 08.05.2015

Surinder Kumar and others

..... APPELLANTS

VERSUS

Anil Garg @ Anil Kumar Singla

..... RESPONDENT

PRESENT: - Mr. Ashish Grover, Advocate
for the appellants.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

The present appeal against judgment and decree dated 11.12.2014 whereby the First Appellate Court dismissed the appeal against judgment and decree dated 30.08.2012 passed by Additional Civil Judge (Sr. Divn.), Bathinda.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil

Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for possession by way of specific performance of agreement of sale dated 08.10.2007. The total sale consideration was fixed to be ₹31,50,000/- and earnest money of ₹6 lacs was paid on 08.10.2007 itself in presence of the witnesses. The balance amount was to be paid on 23.02.2008, the date fixed for execution of sale deed. Thereafter, the defendants were not willing and ready to perform their part of agreement and failed to put in appearance in the office of Sub Registrar on 22.02.2008 whereas the plaintiff got his presence marked on 25.02.2008. The plaintiff contacted the defendants and again reached the office of Sub Registrar and got his presence marked but the defendants failed to put in appearance and, as such, suit before the Court.

The defendants contested the suit taking the plea that alleged agreement is unregistered. The plaintiff was not willing and ready to perform his part of the agreement. The defendants are owners in possession of the suit property. The defendants admitted that they had entered into agreement of sale dated 08.10.2007 but prayed that the

suit be dismissed.

On these facts, the Court of first instance settled the following issues and put the parties to trial:

1. Whether the plaintiff was ready and willing to get the sale deed executed in terms of agreement of sale dated 8.10.2007 as alleged? OPP
2. Whether the plaintiff is entitled to specific performance of agreement to sell dated 8.10.2007? OPP
3. Whether the plaintiff is entitled to injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff is barred and estopped by his act and conduct from filing the suit? OPD
6. Relief.

The Court of first instance after recording of evidence and appreciation thereof, passed decree for specific performance of agreement. The defendants preferred the appeal before the Court of first appeal but remained unsuccessful and, as such, appeal before this Court.

At the time of arguments, Mr. Ashish Grover, learned counsel for the appellants took the plea that the Courts below have not appreciated the evidence available on file. The plaintiff himself was not having sufficient funds for getting the sale deed executed. He failed to produce any

documentary evidence as to how he had collected sufficient amount to get the sale deed executed. As per defendants, they visited the office of Sub Registrar on 25.02.1988 for execution of sale deed but because of non-availability of the sale price with the plaintiff, sale deed could not be executed. Reply to the legal notice was given and copy of the same is Ex.D-1 on the file. The Courts below wrongly recorded the findings on the issues. Hence, appeal be accepted and judgments and decrees of both the Courts below be set aside.

Having considered the submissions made by learned counsel for the appellants, this Court is of the considered view that the present appeal is against the concurrent findings of both the Courts below. Learned counsel for the Courts below have already appreciated the oral as well as documentary evidence available on file but there is no substantial question of law involved in this case. The execution of agreement has been admitted by the appellants. Even the receipt of earnest money has not been denied. The plaintiff has been able to prove that he was willing and ready to perform his part of the agreement and for that purpose he had put in appearnace in the office of Sub Registrar and got his presence marked to make his intention further clear. He had got issued legal notice to the

defendants and even reply to the legal notice was given by the defendants-appellants. Still the defendants failed to put in appearance and to take necessary steps for execution of sale deed. The plaintiff again made his intention clear to the specific performance of agreement on his part by filing the present suit of specific performance.

Mere fact that the plaintiff was not having sufficient funds to get the sale deed executed is against the evidence available on file which has been appreciated by the Courts below. There being no substantial question of law in the present case, the present Regular Second Appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure.

In view of the above, the present appeal is without any merit and the same is dismissed.

(SHEKHER DHAWAN)
JUDGE

May 08, 2015
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