

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 2214 of 2015 (O&M)

Date of Decision:- 21.05.2015

Bhupinder Singh

.....Appellant

Versus

Jangir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Jasmail Singh Brar, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the concurrent findings of both the Courts below in a suit for possession by way of specific performance of agreement of sale.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff filed

a suit for possession on the basis of agreement of sale dated 05.07.2006. The total sale consideration was fixed to be `19,50,000/- and a sum of `2,90,000/- was received as earnest money and balance payment was to be made on or before 30.04.2007. Thereafter, defendant No.1 never came forward to get the sale deed executed though plaintiff always remained ready and willing to perform his part of the agreement. He has remained present in the office of sub-registrar Fazilka along with balance sale consideration and registration charges but defendant No.1 did not turn up till evening of 30.04.2007. Plaintiff had also got attested his affidavit in token of his presence. Legal notice was sent through counsel and still no response. More so, the plaintiff was not the owner of 22 kanals 18 marlas of land, which was the subject matter of the agreement. Rather he was owner of 20 kanals 15 marlas. Plaintiff was ready to get the sale deed executed qua land measuring 20 kanals 15 marlas. As per plaintiff, defendant No.1 ready to transfer the land measuring 21 kanals 19 marlas including the suit land in favour of defendant No.6 and 7, vide registered sale deed dated 26.07.2007 and handed over the possession of above said land to defendant Nos.6 and 7. Plaintiff came to know about the said act of defendant No.1 in August 2007. Thereafter, he filed the suit.

4. Defendant No.1 admitted the execution of agreement and receipt of earnest money but took the plea that plaintiff was not willing and ready to perform his part of the agreement. He had not put in appearance in the office of sub-registrar on 30.04.2007, whereas defendant No.1 remained present in the office of sub-registrar till evening and got his affidavit attested in token of his presence. Since plaintiff

failed to perform his part of the agreement, so, he is not entitled to seek specific performance and the earnest money given to defendant No.1 stood forfeited. Defendant No.1 had already sold the land to Ranjit Singh and Gurcharan Singh (defendant Nos.6 and 7) on 26.07.2007 and the agreement was rescinded and earnest money stood forfeited.

5. Defendant Nos.6 and 7 took the plea that they had purchased the suit land on the basis of registered sale deed for consideration and after verifying the revenue record and they are in peaceful possession of the same as owners and suit liable to be dismissed.

6. On these facts, the following issues were settled by the Court of first instance: -

- “1. Whether the defendant No.1 executed agreement to sell dated 5.7.2006 with regard to suit land in favour of the plaintiff?OPP
 2. If issue No.1 is proved whether the plaintiff is entitled to possession by way of specific performance of the agreement to sell dated 5.7.2006? OPP
 3. If issue No.2 is decided in the negative, whether the plaintiff is entitled to the alternative relief of recovery as claimed?OPP
 4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
 5. Whether the plaintiff has concealed the material and patent facts from the Court, if so its effect? OPD
 6. Whether the suit is not maintainable?OPD”
7. The Court of first instance after recording of evidence and appreciation thereof, returned the findings that the plaintiff has been able to prove due execution of agreement and has proved his willingness at

the time of execution of the agreement, thereafter, shown his willingness to perform his part of the agreement by putting in appearance in the office of sub-registrar and thereafter by way of getting issue legal notice and by way of filing present suit. The suit of the plaintiff was decreed. First appeal was preferred before the Court of first appeal and same was dismissed. As such, the present appeal before this Court.

8. At the time of arguments, Mr. J.S. Brar, Advocate, learned counsel for appellant (defendant Nos.6 and 7-subsequent vendees) mainly took the plea that plaintiff was not ready and willing to perform his part of the agreement and had not put in appearance in the office of sub-registrar on the date fixed for the purpose. Defendant was present and willing to perform his part of the agreement and in token of that got attested affidavit Ex.D-1 in the office of sub-registrar. Plaintiff legally not entitled to seek specific performance of the agreement in such cases. In support of his arguments, learned counsel for the appellant placed reliance upon judgment from Hon'ble Supreme Court in case **Permmada Prabhakar and others vs. Youngmen's Vysya Association and others, 2014(10) JT 58**, wherein Hon'ble Supreme Court observed that the agreement cannot be performed by the vendor, as per the terms of the agreement, such a party cannot seek specific performance of agreement of sale. As regards to readiness and willingness, on the part of plaintiff, reliance placed upon judgment from this Court in case **Ishar and others Vs. Sheo Ram and others, 1987 PLJ 421**, wherein view was taken by this Court that a person who wants the contract to have it specially enforced, has to establish his financial ability to perform his part of the

contract. It is incumbent upon the plaintiffs to show that they had money at their disposal to pay the sale consideration.

9. Learned counsel for the appellant also took the plea that in fact plaintiff was not ready with the money for getting the sale deed executed on the target date for execution of sale deed i.e. 30.04.2007, whereas actually he had sold the land in May 2007 and funds were not available with the plaintiff on the date fixed that is why he had not come forward to get the sale deed executed, Now the plaintiff seeks specific performance of the agreement when the same has already been rescinded.

10. Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have already dealt with the present controversy whether the plaintiff was willing and ready to perform his part of the agreement. The Courts below have appreciated the evidence, regarding marking of presence by the plaintiff in the office of sub-registrar and rightly perused the evidence available on file on the point of the affidavit of Ex.P2 and the same was got attested from Executive Magistrate. The same was duly proved as per testimony of PW4 Ram Rattan, registration clerk, who identified the signatures of Naib Tehsildar-cum-Executive Magistrate. Regarding availability of funds, plaintiff had taken specific plea in his cross-examination that he had sold the land to Baldev Singh, resident of district Patiala for total consideration of `40,00,000/- and he could even produce the record. To the contrary, defendant No.1 had proved affidavit Ex.D1, which was attested before the notary public and same was not attested by the sub-registrar/Executive Magistrate.

11. More so, the Courts below have rightly appreciated the evidence and returned the findings that willingness of the parties can be considered by conduct as well. There was no reason for the plaintiff not to get the sale deed executed though he had paid earnest money and thereafter got issued legal notice and then filed the present suit. The entire conduct of the plaintiff reflects that he was always ready and willing to perform his part of the agreement rather defendant No.1 failed to perform his part of agreement. The evidence available on file has been duly appreciated by both the Courts below. Otherwise, execution of agreement and receipt of earnest money was not disputed by defendant No.1. There being no substantial question of law involved in this case, the present Regular Second Appeal is without any merit and same stands dismissed.

May 21, 2015
naresh.k

(SHEKHER DHAWAN)
Judge