

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2223 of 2015 (O&M)

Date of decision : 29.07.2015

Subhash Chander

...Appellant

versus

Dayanand & another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravinder Hooda Advocate for the appellant.

RITU BAHRI, J (Oral)

The appellant/plaintiff has come up in regular second appeal against the judgment of the trial Court dated 19.11.2013 and the lower appellate Court dated 18.03.2015 whereby his suit for permanent injunction has been dismissed.

The defendants entered into an agreement with the plaintiff to sell the land as per the details given in the suit, situated at Mouja Rohtak, Tehsil and District Rohtak @ Rs.60 lacs per acre vide agreement to sell vide 21.07.2009. The defendants received earnest money of Rs.45 lacs from the plaintiff and Satbir Kaushik son of Mahinder Singh. The agreement along with remaining sale consideration was to be executed on or before 21.01.2010. The State of Haryana stopped registration of documents of the area vide notification under Section 7-A of Haryana Development and Regulation of Urban Area Act (8 of 1975) (hereinafter referred to as

“the Act”) vide letter No.221-23 dated 05.11.2009. Thereafter the defendants sent a notice on 07.01.2010 to the plaintiff and Satbir Kaushik that there was a ban of registration of sale deed. The suit for permanent injunction restraining the defendants from alienating selling and transferring the suit land in any manner was filed on 22.02.2011.

Both the Courts have recorded a concurrent finding of fact that pursuant to the agreement Ex.P1 which was executed on 21.07.2009, the same had to be complied with as on 21.01.2010. The plaintiff has filed the suit on 22.02.2011 for permanent injunction after a gap of one year of the date fixed for execution of the agreement. In paragraph 14, the lower appellate Court has observed that as per agreement Ex.D1, the defendants Dayanand and Risal Singh have executed agreement to sell in favour of Satbir Kaushik and Subhash Chander (plaintiff) to the extent of 30/100 share and 70/100 share respectively @ Rs.60 lacs per acre on 02.10.2008. This sale could not be executed. Ex.D2 is the receipt. There are certified copies of sale deed Ex.D4 to D12 which go to show that sale deeds were got executed by Dayanand and Risal Singh defendants to different vendees. Thereafter, vide agreement to sell deed dated 21.07.2010 Ex.P1 a fresh agreement was executed which was to be finalised on 21.01.2010. The plaintiff has not disclosed to the Court that the defendants had executed sale deed Ex.D4 to D12 to different vendees. The plaintiff did not execute the sale deed and hence after a gap of one year when the date of execution was expired on 21.01.2010 he has

filed the present suit. The suit of permanent injunction was not maintainable in view of judgment passed in **Chellingi Narayanamurthy V/s Chellingi Satyanarayana & ors. 2008 (2) CivCC 712 AP** wherein it has been held that a suit for permanent injunction is not maintainable in the absence of relief prayed for specific performance of the agreement.

Heard counsel for the appellants.

Ratio of the judgment referred to above is fully applicable to the facts of the present where it has been held that in a suit filed for permanent injunction only without seeking relief of specific performance of agreement of sale is barred under Order 2, Rule 2 of the Civil Procedure Code. The same cannot be granted when the plaintiff has failed to perform his part of the contract and has failed to seek the relief of specific performance of the agreement to sell. In the facts of the present case, the plaintiff had earlier entered into an agreement dated 02.10.2008 qua the suit property but could not execute the same. However, the defendants at the same time had sold the land to various vendees as per Ex.D4 to D12. Under Section 3 of the Act, there was a condition to get a licence. Since the defendants had executed a sale deed to various other vendees it was the plaintiff who had failed to show his readiness and willingness to execute the sale deed. Hence as per the judgment given by the Andhra Pradesh High Court, suit for mandatory injunction was not maintainable without seeking relief of specific performance. No substantial

question of law arises in this appeal for adjudication.

Dismissed.

29.07.2015
Vinay

(RITU BAHRI)
JUDGE