

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2770 of 2015 (O&M)

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Date of decision:30.7.2015

Leela Ram

.....Appellant

v.

Laxmi Dhar

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Mittal, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Leela Ram-appellant/defendant against Laxmi Dhar-respondent/plaintiff challenging the impugned judgment and decree dated 4.11.2014 passed by the learned District Judge, Rewari, vide which the appeal filed by the plaintiff against the impugned judgment and decree dated 8.7.2013 passed by learned Additional Civil Judge (Senior Division), Rewari, dismissing the suit of the plaintiff, has been allowed and the suit of the plaintiff has been decreed.

The brief facts of the case are that Laxmi Dhar-plaintiff filed suit against Leela Ram-defendant for possession by way of specific performance of agreement to sell dated 26.11.2010. It is case of the plaintiff that the defendant agreed to sell the suit land vide agreement to sell dated 26.11.2010 for ₹8,55,000/-. ₹2,50,000/- was paid in cash on the said date

itself as earnest money. The sale deed was to be executed by 5.3.2011. As the office of Sub Registrar was closed on 5.3.2011 and 6.3.2011 being Saturday and Sunday, therefore, the plaintiff appeared before the Sub Registrar, Rewari on 4.3.2011 and 7.3.2011, but the defendant did not appear. The plaintiff got his presence marked before the Executive Magistrate, Rewari, through an affidavit. It is also the case of the plaintiff that he was ready and willing and is still ready and willing to perform his part of the agreement.

On the other hand, as per the case of the defendant, he has admitted the execution of the agreement and regarding receiving earnest money. There is also no dispute regarding the execution of the sale deed, but the defendant also admitted in the written statement that the plaintiff came present in the office of Sub Registrar. The case of the defendant is that the plaintiff was not ready with the sale consideration, therefore, he was not ready and willing to perform his part of the contract.

The learned Additional Civil Judge (Senior Division), Rewari, after framing the issues and after the parties led the evidence dismissed the suit of the plaintiff mainly holding that the plaintiff was not ready and willing to perform his part of the contract. The plaintiff aggrieved from these findings given in the judgment and decree dated 8.7.2013 filed an appeal before the District Judge, Rewari, who vide judgment and decree dated 4.11.2014 accepted the appeal and decreed the suit of the plaintiff. Aggrieved from the judgment and decree passed by the learned District Judge, Rewari, the appellant-defendant has filed this regular second appeal.

Learned counsel for the appellant argued that the findings given by the learned Additional Civil Judge (Senior Division), Rewari, are correct and as per law. The findings given by the learned District Judge, Rewari, are incorrect, perverse and not as per evidence.

After hearing leaned counsel for the appellant and going through the record, I find that the sale deed was to be executed on 7.3.2011 and as per the case of the plaintiff, he remained present in the office of Sub Registrar on 4.3.2011 and also on 7.3.2011, but the defendant did not appear. The defendant in the written statement admitted the presence of the plaintiff before the Sub Registrar's office. The mere fact that no money was withdrawn from the bank on that day by the plaintiff is no ground to presume that he was not ready and willing to perform his part of the contract. The plaintiff filed the suit which is within four days from the date fixed for execution of the sale deed. As 5th and 6th were holidays due to Saturday and Sunday, therefore, the sale deed was to be executed on 7.3.2011 as per the agreement and the suit has been filed on 11.3.2011. The defendant has brought the Clerk of the office of Sub Registrar, who has proved the affidavits Ex.DW.1/B and Ex.DW.1/C regarding presence of the defendant by identifying the signatures of the Sub Registrar. The same Clerk has also identified the signatures of the Sub Registrar on the affidavits Ex.PW.2/C and Ex.PW.2/D filed by the plaintiff. Even otherwise, as discussed by the learned District Judge, the presence of the plaintiff in the office of Sub Registrar stood admitted by the defendant in the written statement. Therefore, formal proof of his presence was not required.

Otherwise also, by filing the suit which is within four days after the date of the execution of the sale deed, itself shows that the plaintiff was ready and willing and is still ready and willing to perform his part of the contract. It is rather the defendant who has contested the suit of the plaintiff by stating that the plaintiff was not ready and willing and the earnest money has been forfeited etc. Therefore, the findings given by the learned District Judge in the judgment and decree dated 4.11.2014 are correct and as per law and evidence on record. Nothing has been pointed out which evidence has been misread by the District Judge. There is nothing on the record to show that the findings given by the learned District Judge are perverse or against the evidence. Rather, a perusal of the record shows that the findings given by the learned Additional Civil Judge (Senior Division), Rewari, are not as per evidence and law. Otherwise also, there is nothing on the record to show that the time was the essence of the contract. Further more, this question time is the essence of the contract also does not arise in the present case as the suit had been filed within four days by the plaintiff. No substantial question of law arises in this regular second appeal.

Therefore, the findings given by the learned District Judge, Rewari, are correct and as per law which do not require any interference from this Court and the same are upheld.

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

July 30, 2015.

(Inderjit Singh)
Judge

hsp