

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3198 of 2015 (O&M)
Date of Decision: July 13, 2015

Jaspinder Kaur

...Appellant

Versus

Iqbal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Y.P.Singla, Advocate
 for the appellant.

INDERJIT SINGH, J.

CM No.7714-C of 2015

For the reasons mentioned in the application, the same is allowed. The delay of 85 days in filing the appeal is condoned.

RSA No.3198 of 2015

Appellant-defendant No.3 Jaspinder Kaur has filed this regular second appeal against respondent-plaintiff Iqbal Singh and proforma-respondents Anil Kumar, Neeraj Kumar and PUDA, challenging the impugned judgment and decree dated 09.12.2011 passed by learned Civil Judge (Senior Division) SAS Nagar vide which the suit of the plaintiff for possession and for permanent injunction was decreed and also the judgment and decree dated 12.11.2014 passed by learned Addl. District Judge, S.A.S. Nagar, vide which the appeal filed by appellant-defendant No.3 was dismissed.

The brief facts of the case are that plaintiff-respondent Iqbal Singh filed a suit against Anil Kumar, Neeraj Kumar, Jaspinder Kaur and PUDA, for possession of the suit property by way of specific performance of agreement to sell dated 28.09.2000 with consequential relief of permanent injunction against the defendants. It is the case of the plaintiff that defendant No.3 acting as General Power of Attorney of defendants No.1 and 2 entered into an agreement dated 28.09.2000 with the plaintiff to sell the semi built plot No.C-80 situated in Phase-VI, SAS Nagar, Mohali, for a sum of ₹43,50,000/- by receiving earnest money of ₹5 lacs in order to get the sale/transfer deed of plot executed on or before 28.02.2001 or within a period of 30 days after issuance of 'No Objection Certificate' (NOC) by defendant No.4 or whichever would be earlier. Defendant No.3 acting as such agreed with the plaintiff to extend the date of execution of sale deed mutually on account of non issuance of NOC by defendant No.4, on the reason by shifting responsibility to S.S.Bedi to obtain NOC from defendant No.4. Defendant No.3 also agreed to hand over physical vacant possession of the premises in dispute at the time of receipt of full and final payment of sale consideration of the same. It is the case of the plaintiff that defendant No.3 ultimately could not obtain the NOC and could not complete all other formalities. Defendant No.3 also received additional payment of ₹7,50,000/- vide writing dated 28.09.2000 from the plaintiff. They mutually extended the date of execution of sale deed vide various endorsements from time to time, upto 30.10.2002. Plaintiff also paid ₹57,400/- vide receipt dated

11.04.2001 and payment of ₹39,000/- on request of defendant No.3 to defendant No.4. The plaintiff in this way, paid an amount of ₹13,46,400/- as part payment of the sale consideration.

Upon notice, defendants No.1 to 3 filed written statement, admitting that defendant No.3 acting as General Power of Attorney of defendants No.1 and 2, entered into an agreement to sell dated 28.09.2000 with the plaintiff to sell semi built plot No.C-80 situated in the area of Phase-VI, SAS Nagar, for sum of ₹43,50,000/-. The terms and conditions are also admitted. It is further stated that plaintiff after entering into agreement with defendant No.3, went abroad. S.S.Bedi was the person of plaintiff and undertook to obtain NOC but did not obtain the same intentionally for delaying the process. It is also stated that the plaintiff did not serve any notice upon the contesting defendants. Further, it is stated that plaintiff in fact was not available at the time of execution on three extension of dates of execution of sale deed.

The plaintiff examined himself as PW-1, PW-2 Narinder Singh, PW-3 Hayat Singh, PW-4 Ranjit Whig, PW-5 Bhinder Kaur and PW-5 (repeated) Bikram Singh and closed his evidence. On the other hand, defendants examined DW-1 Gurpreet Singh and closed evidence.

Learned Civil Judge (Senior Division) SAS Nagar, after going through the evidence on record, decreed the suit of the plaintiff for specific performance of the agreement to sell. Aggrieved from the above-said judgment and decree, an appeal was filed by appellant-

defendant No.3, which was also dismissed by learned Addl. District Judge, SAS Nagar, vide judgment and decree dated 12.11.2014.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by appellant-defendant No.3.

At the time of arguments, learned counsel for the appellant argued only on one point that plaintiff was not ready and willing to perform his part of the contract and therefore, the suit of the plaintiff cannot be decreed.

After hearing learned counsel for the appellant and after going through the record, I find that the agreement to sell is an admitted fact. The payment of earnest money is also an admitted fact. It is also not disputed between the parties that sale deed was to be executed on or before 28.02.2001 or within a period of 30 days after issuance of 'No Objection Certificate' (NOC) by defendant No.4 or whichever would be earlier. It is admitted case that at the time of filing of the suit, NOC was not obtained. The mere fact that NOC was to be obtained by S.S.Bedi, who was the person of plaintiff, is no ground to dismiss the suit of the plaintiff. S.S.Bedi is a attesting witness and a mediator in the contract. No amount is to be paid to S.S.Bedi. If he could not obtain the NOC, the plaintiff is not to suffer for this. The plaintiff has filed the suit on 23.08.2004. It is also the case of the plaintiff that he deposited some money with defendant No.4 even on 23.01.2004 on request of defendant No.3, which shows that plaintiff was trying to get the sale deed executed by taking NOC

from PUDA. The agreement to sell is regarding immovable property. Time is not essence of the agreement in this case. Nothing on the record shows that at which stage the plaintiff was not ready and willing to perform the part of the agreement. The mere fact that suit has been filed on 23.08.2004 when the date of execution of sale deed is extended to 30.10.2002, is also no ground to disbelieve the version of the plaintiff.

By discussing the evidence on record minutely and carefully, both the Courts decided the case in favour of the plaintiff. There is nothing on record as to which evidence has been misread by the Courts below or which findings are perverse.

In view of the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per evidence and law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

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

July 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE