

**125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 4411 of 2015

Date of Decision: December 17, 2015

Gurnam Singh

.... Appellant

vs.

Balbir Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. G.S. Attariwala, Advocate for the appellant.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 16.03.2015 passed by learned Addl. District Judge, SAS Nagar, Mohali, affirming the judgment and decree dated 05.12.2011 passed by learned Addl. Civil Judge (Sr. Divn.), Kharar, vide which the suit of the plaintiff for specific performance was decreed.

The facts of the case are that according to the defendant-appellant, he had executed an agreement to sell dated 16.11.2004 in favour of the plaintiff-respondent, whereby he was agreed to sell his land measuring 6 bigha, 14 biswa, situated in Village Gharuan, Tehsil Kharar, District Ropar, vide jamabandi for the year 1998-99 @ ₹4,41,500/- per bigha. The total sale consideration was of ₹29,58,050/-. ₹4,00,000/- were paid as earnest money. The sale deed was to be executed on or before 30.05.2005.

The plaintiff claimed that on the date fixed, he remained present in the Tehsil complex with the balance sale consideration but defendant did not turn up.

On the other hand, defendant did not deny the agreement to sell and stated that the plaintiff was not ready and willing to perform his part of contract. Defendant also claimed that on 30.05.2005, he remained present in the Tehsil complex from 9.00 a.m. to 4.45 p.m., but the plaintiff did not turn up. The defendant had sworn an affidavit before the Oath Commissioner and another affidavit before the Tehsildar-cum-Executive Magistrate, Kharar.

The lower court after examining the facts, found that the plaintiff had sworn an affidavit and got it attested by an Oath Commissioner. Later on, the same was cancelled. The defendant had also sworn an affidavit before the Oath Commissioner and another affidavit before the Tehsildar-cum-Executive Magistrate, Kharar. The lower court held that the plaintiff was ready and willing to perform his part of the contract. The first appellate court while examining the said entries found that the fact that plaintiff and the witness signed the entry at serial No.113 regarding the affidavit, goes to show that on the date of execution of the sale deed, the plaintiff and his witness were present in the office of Tehsildar-cum-Executive Magistrate, Kharar. Therefore, it was held that the plaintiff was ready and willing to perform his part of the contract.

Both the courts below have recorded the findings of facts.

Even though, defendant was present on the date fixed for the

execution of the sale deed and got the presence marked, the fact remains that entry regarding the affidavit of the plaintiff also made in the register of the Tehsildar-cum-Executive Magistrate, Kharar, which was signed by him, indicating his presence. The findings of facts cannot be interfered in the regular second appeal. There is another fact, which goes to show that the plaintiff was ready and willing to perform his part of the contract.

Even if affidavits of both the parties are ignored, the fact remains that on the next day of the date fixed for the execution of the sale deed i.e. 31.05.2005, the plaintiff filed the present suit for specific performance, which goes to show that the plaintiff was ready with the money and was willing to perform his part of the contract. It being so, no fault can be found with the concurrent findings recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the presence regular second appeal stands dismissed.

December 17, 2015
sarita

(KULDIP SINGH)
JUDGE