

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1739 of 2014 (O/M)
Date of decision : 17.11.2015

Pawan Kumar

..... Appellant

Versus

Sri Pal Saini and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jarnail S. Saneta, Advocate, for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter 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 16.11.2013, passed by the learned Additional District Judge, Panipat, affirming the judgment and decree dated 26.3.2011, passed by the learned Civil Judge (Senior Division), Panipat, whereby the suit of the plaintiff (respondent No. 1 herein) for possession by way of specific performance of the agreement of sale dated 2.11.2006, was decreed in favour of plaintiff and proforma defendant No. 2 and against defendant No. 1 alongwith the cost of the suit to the effect that the plaintiff and

RSA No. 1739 of 2014 (O/M)

-2-

proforma defendant shall make the payment of the remaining sale consideration to the defendant No. 1 within a period of one month from today after adjusting the amount of Rs. 3,60,000/- as an earnest money and amount of cost and thereafter, the defendant No. 1 shall execute and register the sale deed in favour of the plaintiff and proforma defendant within a period of one month, failing which the plaintiff and proforma defendant shall be entitled to get the same executed and registered through the Court.

Briefly stated, the plaintiff had filed a suit for possession by way of specific performance of agreement of sale dated 2.11.2016 against defendant No. 1, inter-alia, pleading that defendant No. 1 is owner in possession of the agriculture land, fully detailed in the head note of the plaint. Defendant No. 1 had entered into an agreement to sell the property in dispute with plaintiff and proforma defendant No. 2 on 10.1.2006. It is further claimed that defendant No. 1 received Rs. 3,60,000/- from plaintiff and proforma defendant No. 2 as earnest money in the presence of witnesses at the time of execution of agreement to sell. The total sale consideration was fixed at Rs. 4,10,800/-. The sale deed was to be executed on 28.2.2006. On 28.2.2006, plaintiff and proforma defendant No. 2 reached the office of Sub Registrar, Panipat, but defendant No. 1 informed them that NOC qua the suit property could not arranged and he sought time till 30.8.2006. Thereafter, on

RSA No. 1739 of 2014 (O/M)

-3-

6.3.2006, defendant No. 1 demanded Rs. 10,000/- for getting the NOC of the suit property from the competent authority. On the extended date of execution of sale deed i.e. 30.8.2006, defendant No. 1 again sought time till 2.11.2006 as again he could not arrange the NOC of the suit land. On the same day, defendant No. 1 executed another agreement of sale dated 30.8.2006 in favour of plaintiff and proforma defendant No. 2. Thereafter, on coming to know that 20.1.2007 is a holiday, plaintiff requested defendant No.1 to come in the office of Sub Registrar, Panipat, to execute the sale deed on 19.1.2007, but defendant No. 1 did not turn up. Defendant No. 1 again gave assurance to the plaintiff and proforma defendant No. 2 that on 22.1.2007, he will get the sale deed executed in their favour and on the assurance of defendant No. 1, the plaintiff purchased the stamp papers of that date, but defendant No.1 did not produce the NOC of the suit property. The plaintiff served legal notices dated 4.7.2007 and 7.7.2007 upon defendant No. 1 to come present in the office of Sub Registrar, Panipat, but he did not turn up. Again, defendant No. 1 was requested to execute the sale deed, but he refused to execute the same.

I have heard the learned counsel for the appellant and have also carefully gone through the file.

The learned counsel for the appellant contends that the

RSA No. 1739 of 2014 (O/M)

-4-

date of sale in this case was 28.2.2006. On that date, the defendant had also appeared for execution of the sale deed. The plaintiff has manipulated the purchase of the stamp papers and later on got it refunded. It is claimed that the plaintiff was not ready and willing to perform his part of contract on the said date. It also comes out that the suit was filed on 18.7.2007 i.e. within six months. However, on the first date, the defendant did not state that he is ready and willing to execute the sale deed. The fact that plaintiff immediately filed the suit within six months goes to show that the plaintiff was ready and willing to perform his part of the contract. He had purchased necessary stamp papers. The findings of facts have been recorded by both the Courts below that the plaintiff was ready and willing to perform his part of the contract. Therefore, no substantial question of law arises in the present regular second appeal. Hence, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

17.11.2015
sjks