

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

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Regular Second Appeal No.458 of 2015 (O&M)
Date of Decision: October 20, 2015

Fauja Singh and another

...Appellants

Versus

Gurnam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kameshwar Ghumber, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the learned Additional District Judge, Fazilka, dated 03.09.2014, by which the suit filed by the respondent-plaintiff for specific performance of the agreement to sell dated 28.08.2010 Exhibit P-1, stands decreed.

2. It is the contention of learned counsel for the appellants-defendants that the learned Additional Civil Judge (Senior Division), Fazilka, on the basis of the pleadings and the evidence led by the parties, has rightly come to the conclusion that the respondent-plaintiff was not ready and willing to perform his part of the contract as he did not have the financial resources to pay the remaining amount of consideration i.e. ₹6,00,000/- on the date when the sale deed was to be executed i.e. 28.07.2011. His further contention is that the respondent-plaintiff had asserted that he had borrowed an amount of ₹5,50,000/- from Surinder Singh and ₹2,00,000/- from Sukhpal Singh but none of these witnesses has been produced before the trial Court to support the said assertion. He, thus, contends that the impugned judgment and decree passed by the Lower Appellate Court cannot sustain and deserve to be set aside.

3. This contention of learned counsel for the appellants-defendants cannot be accepted as it is a settled preposition of law that the readiness and willingness on the part of the person, who intends to buy the property has to be proved not by the amount to be carried with him, however, in the present case, in his evidence, the respondent-plaintiff has asserted that on the date stipulated for registration of the sale deed i.e. 28.07.2011, he had brought ₹6,00,000/- and the source has also been specified. He has stated that ₹4,50,000/- was lying in his house and he had borrowed ₹2,00,000/- from his cousin Sukhpal Singh son of Jangir Singh. It is an admitted position that an amount of ₹8,20,000/- has been paid to the appellants-defendants as earnest money and the remaining sale consideration is ₹6,00,000/-. The source and the availability of the funds have also been stated. That apart, apart from he being present in the office of the Sub Registrar on the stipulated date to get the sale deed executed i.e. 28.07.2011, on the said date, he had got executed an affidavit Exhibit P-4 from the Notary Public to mark his presence. The appellants-defendants admittedly did not appear before the Sub Registrar for executing the sale deed. The readiness and willingness on the part of the respondent-plaintiff to perform his part of the contract is further established from the fact that the present suit has been filed on 20.09.2011 i.e. within a period of two months from the stipulated date for execution of the sale deed had expired and the appellants-defendants had failed to turn up to perform their part of the contract.

4. The learned Lower Appellate Court has rightly appreciated the evidence and the legal position and, therefore, the conclusions drawn therein, cannot be said to be either perverse or illegal, which would call for

any interference. It may be added here that as far as the execution of the agreement to sell dated 28.08.2010 is concerned, the same has been proved and accepted by both the Courts below, although the stand of the appellants-defendants was that no such agreement to sell had been executed by them and it was a forged and fabricated document, which assertion has been found to be false.

5. In view of the above, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.1273-C of 2015, stands disposed of as infructuous.

October 20, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE