

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2925 of 2014 (O&M)
Date of decision:- 29.04.2015

Manjeet Singh

Appellant

Versus

Kashmir Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Akshay Bhan, Sr.Advocate with
Mr. Alok Mittal, Advocate
for the appellant.

Mr. J.S. Bhandohal, Advocate
for the respondent.

RITU BAHRI J.

The present regular second appeal is directed against the judgment dated 08.05.2014 passed by Addl. District Judge, Jind whereby the appeal filed by the plaintiff/appellant (for short 'appellant') against the judgment dated 09.09.2011 passed by learned Civil Judge (Jr. Divn.) Safidon was dismissed

The appellant pleaded that the defendant-respondent (for short 'the respondent') entered into agreement to sell with him to sell his suit land @2,10,000/- per acre on 08.03.2004 and executed an agreement to sell dated 08.03.2004 in favour of the appellant in the presence of scribe and witness and duly thumb marked in token of its correctness. The respondent received a sum of Rs.56,000/-

as earnest money i.e part of sale consideration from the appellant before Sub Registrar, Safidon at the time of registration of agreement to sell vide deed No. 2615 of 08.03.2004. The respondent also agreed to execute and register the sale deed of the suit land in favour of the appellant on or before 15.12.2006 after receiving the balance sale consideration of Rs.62,125/- from the appellant. It was agreed that in case the appellant failed to perform his part of contract then his earnest money of Rs.56,000/- shall be forfeited and the contract shall stand cancelled. The possession of the suit land was agreed to be handed over to the appellant at the time of execution and registration of sale deed and the respondent undertook that he shall pay the bank loan and redeem the suit land before execution and registration of the sale deed. On 15.12.2006, the appellant extended the time for execution and registration of the sale deed of the suit land from 15.12.2006 to 10.11.2007 and the respondent himself had handed over the possession of the suit land to the appellant and executed a writing and affidavit to this effect on the overlead of the first page of the agreement to sell dated 08.03.2004 in the presence of scribe and witnesses and also executed an affidavit for delivery of possession of the suit land to the plaintiff which was duly attested by Notary Public, Safidon. However, on 10.11.2007, the respondent did not come

present in the office of Sub Registrar Safidon due to holiday of Saturday and Sunday and further on 12.11.2007, he also did not come present whereas the appellant remained present in the office of Sub Registrar Safidon along with balance sale consideration and expenses of the sale deed. Thereafter, the appellant moved an application on 12.11.2007 to Sub Registrar Safidon for marking his presence, who attested the affidavit of the presence of the appellant. Thus, the appellant was ready and willing to perform his part of contract and the respondent was threatening to disturb the peaceful possession of the appellant forcibly. Appellant also served a legal notice to the respondent on 14.03.2008 through counsel for execution and registration of the sale deed of the suit property in his favour but of no avail.

On notice, the respondent filed written statement taking a preliminary objection that the suit is time barred. On merits, he denied the version of the appellant and alleged that the agreement to sell is forged and false agreement, which was prepared by the appellant in collusion with the scribe and witnesses under the pretext of mortgage deed. In fact, the respondent had taken the alleged amount of Rs.56,000/- from the appellant on interest @ 1.50 p.a and agreed to simply mortgage the suit land in favour of the appellant to secure the repayment. The respondent is an

illiterate person and appellant brought him in Tehsil Safidon for execution of the simple mortgage deed of the suit land and before the scribe, the appellant told that he has prepared a simple mortgage deed of the said loan and put his thumb impression thereon and respondent under the pretext of simple mortgage deed put his thumb impression as per wish of the appellant. After receipt of the legal notice, the respondent came to know that the appellant had played a fraud upon him. The respondent filed counter claim pleading that he took loan amount of Rs.56,000/- with interest @ 1.50% per annum and the appellant taking the benefit of the illiteracy of the respondent succeeding in getting the alleged agreement to sell, affidavit about possession both dated 08.03.2004.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for specific performance as well as injunction, as prayed for?

OPP

1-A. Whether the defendant is entitled to a decree for counter claim as prayed for? OPD

2. Whether the suit of the plaintiff is not maintainable in the present form? OPP

3. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

5. Whether the plaintiff has come in the Court with clean hands? OPD

6. Whether the suit is hopelessly time barred? OPD

7. Relief.”

The trial Court after going through the entire evidence led by the parties has held that the appellant succeeded to prove due execution of the agreement to sell Ex P1 by examining as many as eight witnesses. However, the appellant failed to prove the readiness and willingness to execute the sale deed as the signatures of the appellant on the affidavit Ex PW2/A and all other documents i.e agreement to sell Ex P1, has no resemblance. Further the appellant has not given any reason that why he sought the extension of time for execution of the agreement to sell, which had actually defaulted him in performing his part of contract. The appellant had sought extension of time on 15.12.2006 to 12.11.2007 and thus there was almost a gap of 01 years in executing the contract. As per the appellant, he entered in to agreement to sell vide agreement to sell dated 08.03.2004 and final extension was sought till 12.11.2007. Thus, there was a gap of almost three and half years. Another fact which the trial Court took into

consideration that the value of the land in the village Malikpur in the year 2004 is not less than Rs.7-8 lacs per acre whereas as per alleged agreement to sell, the appellant wants to usurp and grab the land in village Malikpur for an amount i.e @ Rs. 2,10,000/- per acre. The possession of the land is still with the respondent.

In view of the above fact, the trial Court while exercising its discretion under Section 20 of the Specific Relief Act partly decreed the suit of the appellant to the effect that he is entitled to recover the amount of Rs.56,000/- along with interest @ 12% per annum from 08.03.2004 till the date of actual realization.

The Lower Appellate Court dismissed the appeal filed by the appellant and held that it was the appellant who had sought such a long time to execute the agreement to sell and thus he was not ready and willing to perform his part of contract. Reference was made to judgment of ***Prem Raj and another vs. Smt Darshan and other, 2007(2) 827 LJR (P&H) and Sadhu Singh vs. Kuldip Sharma and others 2005 (1) RCR (Civil) 265*** wherein it was held that where the purchaser sought extension of time, it was indicated that he was not ready and willing to perform his part of contract.

Reference at this stage can also be made to a judgment passed by Hon'ble the Supreme Court in a case of

Sardamani Kandappan v. S. Rajlakshmi and others 2011 (4) RCR

(Civil) 130 wherein it was held that in these days when there is galloping increase in price of immovable property and market value of the properties are not longer stable and steady, there is urgent need to revisit the principle that time is not essence of contract in agreements relating to the immovable property. This issue was left to be considered in any appropriate case.

In view of the above mentioned facts and keeping in view the principles of law discussed above, no substantial question of law arises for adjudication by this Court.

Thus, I do not find any reason to interfere in the findings recorded by the Courts below. Hence, the appeal is dismissed with no order as to costs.

April 29, 2015
G Arora

(RITU BAHRI)
JUDGE