

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.3939 of 2014 (O & M)

Date of Decision: *September 23, 2015*

Amarjit Singh & others

..... APPELLANTS

VERSUS

Gurcharan Singh

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers 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?

. . .

PRESENT: - Mr. N.D. Achint, Advocates, for the appellants.

. . .

Jaspal Singh, J

Defendants have approached this Court through the instant appeal challenging judgment(s) and decree(s) passed by the courts below.

Respondent – plaintiff Gurcharan Singh preferred a suit against Parkash Kaur (since deceased, now represented by her legal representatives) for specific performance of agreement to sell and for permanent injunction. It was pleaded that on

September 7, 2006, defendant entered into an agreement to sell her property, as fully detailed in head note of the plaint, for sale consideration of ₹ 10 lac in the presence of her husband Sher Singh and sons namely Amarjit Singh & Didar Singh, who put their signatures to show their consent and consonance with the terms & conditions of the agreement. The defendant after hearing, understanding and admitting contents of the agreement and after receiving earnest amount of ₹ 2 lac vide cheque dated September 7, 2006, duly executed and thumb marked the agreement in the presence of plaintiff, marginal witnesses, her husband and sons. As per terms & conditions of the agreement, defendant had specifically declared that the suit property was owned and possessed by her on the basis of sale deed No.2181 dated June 17, 1998. Mutation No.7669 had already been sanctioned. She had got constructed the house only after getting the building plan sanctioned from Municipal Committee. It was also declared that she had taken a loan from the Housefed against this property. She will liquidate the loan amount, get the original title deed from the Housefed and thereafter, will execute the sale deed in favour of plaintiff or any person of her choice. The defendant also agreed to clear all house taxes, electricity bills, water supply bills and get clearance from the

concerned Department. She further agreed to get redeemed the house and bring back the original title deed from the Bank/Housefed. She agreed to deliver vacant possession of the house 8 days prior to execution of the sale deed. The sale deed as to be executed on or before December 22, 2006 by paying the remaining sale consideration and if plaintiff failed to do so, the earnest money paid by him will stand forfeited and if defendant failed to perform her part of the agreement to get back original title deed and No Due Certificate from the Housefed and other concerned Department as well as if she fails to deliver actual physical possession 8 days prior to execution of sale deed, the plaintiff will be entitled to get/recover double amount including ₹ 2 lac as earnest money and ₹ 2 lac as damages. The plaintiff was also entitled to get the performance of agreement through Civil Court. Plaintiff further pleaded that he had always been ready and willing to perform his part of agreement. After execution of agreement, plaintiff repeatedly requested the defendant to fulfill her part of agreement but she shown her inability by alleging that she has not been able to arrange No Due Certificate and original title deed from Housefed, from where, she had taken loan. As such, on December 22, 2006, the date for execution of sale deed was extended from December

22, 2006 to February 22, 2007, on the request of defendant and further from February 22, 2007 to April 2, 2007. Plaintiff pleaded that on April 2, 2007, he remained present in the office of Sub Registrar but defendant did not turn up to perform her part of the agreement.

On these backdrop of facts, plaintiff filed the suit for specific performance of agreement. Defendant contested the suit by filing written statement. From the pleadings of parties, following issues were framed on February 9, 2008:-

1. Whether the plaintiff was/is ready and willing to perform his part of agreement dated 7.9.2006? OPP
2. Whether plaintiff has neither cause of action or locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

Both the parties were afforded opportunities and adduced evidence. After hearing learned counsel for the parties and perusing the record, the suit filed by the plaintiff was decreed and defendant was directed to execute the sale deed regarding property in dispute, within three months on depositing of balance sale consideration by plaintiff within one month vide judgment and decree dated November 4, 2011. Further, the

defendant was also restrained from alienating the property. Aggrieved defendant preferred an appeal against the aforesaid decision of lower court, which was dismissed vide judgment & decree dated February 13, 2014 and findings recorded by the lower court were affirmed.

Now, the legal representatives of defendant have filed the instant appeal impugning the judgments and decrees rendered by the courts below.

While assailing the impugned judgments & decrees passed by both the courts below, it has been argued with vehemence by learned counsel for the appellant that the same are absolutely against the evidence available on record and settled canons of law.

No doubt, it is an admitted case of the appellant that an agreement of sale dated September 7, 2006 was entered into between the parties, in respect of the disputed property on receipt of ₹ 2 lac as earnest money out of total sale consideration of ₹ 3 lac and as per the terms & conditions of agreement, sale deed was to be executed and registered on December 22, 2006. Since, plaintiff Gurcharan Singh could not arrange the money required to be paid and to meet other expenses for the execution and registration of sale deed, he got extended date for execution

and registration of sale deed, firstly on December 22, 2006 and then February 22, 2007. So, there is violation of terms & conditions of agreement on the part of plaintiff – Gurcharan Singh, whereas Parkash Kaur, predecessor-in-interest of the appellants has been ready and willing to perform his part of contract. Even on the date stipulated in the agreement, she remained present in the office of Sub Registrar for getting sale deed executed, with all the documents including No Due Certificate etc. It was plaintiff Gurcharan Singh who did not turn up to perform his part of agreement. Even, she also got recorded her presence before the office of Sub Registrar. Though, plaintiff is alleged to have issued a Notice dated April 21, 2007 Ex.P3 to defendant Parkash Kaur but even then, he was not ready and willing to perform his part. In such circumstances, affidavit dated May 9, 2007 Ex.P5 is of no held to the plaintiff. Moreover, there is an escalation of price after the execution of agreement of sale and the property which is agreed to be sold, was not less than ₹ 25 lac, especially in view of circumstances that it was located in none of the best localities. Since Parkash Kaur had been ready and willing to execute the sale deed as per terms & conditions of the agreements of sale on payment of valid sale consideration, it

was plaintiff Gurcharan Singh who violated the terms & conditions of and put off the matter on one pretext or the other. Thus, in such circumstances, plaintiff was neither entitled to relief of specific performance nor to the recovery of amount. Rather, his suit deserves to be dismissed in toto, that too, with special costs by way of acceptance of this appeal.

On the other hand, learned counsel for respondent – plaintiff Gurcharan Singh has supported the impugned judgments & decrees submitting that there are concurrent findings recorded by both the courts below so far as readiness and willingness on the part of respondent is concerned. Rather, it was the appellant – defendant(s) who committed default in the terms & conditions of the agreement of sale and did not execute the sale deed despite the fact that notice dated April 21, 2007 was issued by the plaintiff upon defendant Parkash Kaur to visit the office of Sub Registrar on May 9, 2007 to get the sale deed executed but on that day, she did not turn up. In such a situation, mere making of presence by her on April 2, 2007 is not suffice to hold that she was ready and willing to perform her part of the agreement on that day. Infact, defendant – appellant did not obtain the No Due Certificate on April 2, 2007 i.e. the date stipulated for execution and registration of the sale deed which

was the basic requirement besides procuring the original sale deed from the Housefed. In the absence of aforesaid documents, it was not possible for the defendant – appellant to execute the sale deed. So, mere assertion of the defendant that she was ready and willing to perform her part of agreement is not sufficient to discard the other evidentiary value and the circumstances which were the basic cause for not executing the sale deed by Parkash Kaur. Learned counsel for plaintiff accordingly prayed for dismissal of the appeal.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scanned the impugned judgments & decrees.

Execution of agreement of sale dated September 7, 2006 is an admitted fact, according to which, Parkash Kaur received a sum of ₹ 2 lac as earnest money, that too, vide cheque No.299702 dated September 7, 2006 and balance sale consideration of ₹ 1 lac was to be paid on or before December 22, 2006. However, the date stipulated for execution and registration of the sale deed was extended upto April 2, 2007. It is abundantly clear from the record that original sale deed as lying with Housefed which was to be procured by Parkash Kaur, predecessor-in-interest of the appellant, besides No Due

Certificate. But to the utter surprise, those documents were not available with her on April 2, 2007, the day she is alleged to have visited the office of Sub Registrar to perform her part of agreement. In the absence of aforesaid documents, execution of the sale deed was impossible. Apart from it, one of the terms & conditions settled between the parties, as reflected in the agreement of sale, is that possession of the disputed premises was to be delivered by Parkash Kaur 8 days prior to the execution and registration of the sale deed. Even that condition was fulfilled by her. So, in this circumstances, readiness and willingness on the part of Parkash Kaur cannot be inferred simply on the ground that she appeared before Sub Registrar, remained present there and got attested an affidavit, whereas there is also an evidence adduced by the plaintiff that he has been ready and willing to get his part performed. He served a notice dated April 21, 2007 upon Parkash Kaur asking her to execute the sale deed on May 9, 2007 and on that day, he remained present in the office of Sub Registrar and got attested his affidavit Ex.P5. But at that time, Parkash Kaur did not turn up to execute the sale deed.

Here, it would be pertinent to mention that agreement to sell was entered into between the parties on

September 7, 2006. The date stipulated for executed and registration of sale deed was upto April 2, 2007 i.e. within 8 months and suit was filed by plaintiff Gurcharan Singh on June 14, 2007 i.e. within a period of less than 3 months after failure of defendant Parkash Kaur to perform her part of agreement.

Even otherwise, apart from admission of defendant that she entered into an agreement to sell, it also stands proved by way of oral as well documentary evidence. It is well settled by now that in cases of contract of sale of immovable property, grant of relief of specific performance is a rule and its refusal is an exception, especially, when the agreement is proved.

In the facts and circumstances of the case in hand, it does not require any further evidence to prove the same. In this context, we can have reference of pronouncement of the Hon'ble Apex Court captioned as Nirmala Anand Vs. Advent Corporation Pvt. Ltd. & others, 2002 CLT 1 (SC). Similarly, in case Mohan Singh & another vs. Kulwinder Singh, 2001(2) PLR 776 (P&H), this Court has observed that once execution of an agreement, consideration and readiness & willingness on the part of the plaintiff is proved at the time of institution of the suit

and at all material opportunities, the relief of specific performance should not be denied.

As far as the contention of learned counsel for the appellants that there is a steep escalation of price, it is not less than ₹ 25 lac at present, is itself no ground to deny the relief of specific performance and in this regard, we can have reference of the pronouncement of Hon'ble Supreme Court delivered in case Narinderjit Singh vs. North Star Estate Promoters Limited, 2012(3) Civil Court Cases 091 (SC). So, taking the case of the appellant(s) – defendant(s) from any of the angles, it stands amply proved that she entered into an agreement to sell on receipt of ₹ 2 lac as earnest money but did not honour the terms & conditions and failed to execute the sale deed. Accordingly, plaintiff Gurcharan Singh was constrained to knock the doors of civil court by way of filing a suit for specific performance which has been decreed by the trial court. Appeal preferred by Parkash Kaur also met with the same fate as she utterly failed to establish that she honour her commitment, whereas, plaintiff is proved to be ready and willing at all material points. The filing of suit for specific performance within a period of 3 months on the failure of defendant(s) to execute the sale deed is itself suggestive of the fact that he has been ready and willing to

perform his part of agreement and also remained so even prior to that. Thus, impugned judgments and decrees do not call for any interference by this Court. There is no infirmity, illegality or impropriety, either in the findings recorded by the courts below or impugned judgments & decrees. Rather, this Court is of the considered view that instant appeal is devoid of merits and is not sustainable in the eyes of law. Accordingly, there is no question of law, much less any substantial question of law involved in this appeal.

Dismissed.

Parties are left to bear there own costs.

September 23, 2015
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(Jaspal Singh)
Judge