

In the High Court of Punjab and Haryana at Chandigarh

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CM No.13050-C of 2014
and
R.S.A. No.5507 of 2014 (O&M)

.....

Date of decision:10.4.2015

Dharamvir

.....Appellant

v.

Sanjay Gupta

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Raj Kumar Rana, Advocate for the appellant.

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Inderjit Singh, J.

CM No.13050-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 13 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.5507 of 2014 (O&M):

This regular second appeal has been filed by Dharamvir appellant-defendant against Sanjay Gupta-respondent/plaintiff aggrieved against the impugned judgment and decree dated 24.7.2013 passed by the learned Civil Judge (Senior Division), Naraingarh, and against the impugned judgment and decree dated 3.5.2014 passed by learned Additional District Judge, Ambala.

Learned counsel for the appellant argued that the judgments passed by the Courts below are incorrect and not as per law as the evidence has been misread. The readiness and willingness of the plaintiff-respondent was conditional as he was not ready and willing to perform his part of the contract as per agreement. He further argued that as per Section 60 of the Specific Relief Act, the conditions are to be construed as it is in the document. He further argued that as the suit was filed in the year 2006, after more than two years of the date of execution of the sale deed, which also shows that the plaintiff-respondent was not ready and willing to perform his part of the contract.

After hearing learned counsel for the appellant and going through the record, I find that Sanjay Gupta-plaintiff filed the suit against Dharamvir-defendant for possession by way of specific performance of agreement dated 6.1.2004 executed by the defendant in favour of the plaintiff regarding plot as fully described in the head note of the plaint with specific relief of permanent injunction restraining the defendant to alienate, transfer etc. the property in dispute.

The case of the plaintiff is that he has entered into agreement to purchase the plot in question for total sale consideration of ₹2,02,500/- i.e. 4½ Marlas of land @₹45,000/- per Marla on 6.1.2004 and the date of the execution of the sale deed was fixed as 30.6.2004 and a sum of ₹30,000/- was paid as earnest money at the time of agreement.

During the intervening period, it transpired that the aforesaid plot had not been partitioned between the defendant and his brother, namely,

Ramesh Chand. Accordingly, the plaintiff apprised the defendant to get his plot partitioned and in this regard a notice was served upon him which was duly replied stating that only 'Khata' is to be separated and the 'Khata' is joint. He further stated that he is in possession of his share which is lying vacant. It is further contended that on 30.6.2004 the plaintiff along with balance sale consideration went to the office of Sub Registrar, Naraingarh and waited for the defendant, but he did not turn up. The plaintiff got his presence marked and came back. The plaintiff was always ready and willing to perform his part of the contract, but the defendant was putting off the matter on one pretext or the other. Ultimately, on 30.8.2006, the defendant flatly refused to get the sale deed executed and registered in favour of the plaintiff.

On the other hand, the case of the defendant is that the plaintiff has himself failed to perform his part of the agreement. The plaintiff did not attend the office of Sub Registrar, Naraingarh for getting the sale deed executed in spite of the fact that the defendant served a notice dated 18.6.2004 and the defendant was ready and willing to performance his part of the contract. On 30.6.2004, when the plaintiff did not attend the office of Sub Registrar, Naraingarh, the defendant got his presence marked on 30.6.2004 itself. It is further stated that the defendant received a sum of ₹30,000/- as earnest money which has been forfeited as the plaintiff has failed to perform his part of the agreement. It is also stated that there is no dispute between the brothers as alleged.

Both the parties led the evidence. Learned Additional Civil

Judge (Senior Division), Naraingarh, vide judgment and decree dated 24.7.2013 decreed the suit of the plaintiff for specific performance. Against the judgment and decree passed by the learned Additional Civil Judge (Senior Division), Naraingarh, the defendant-appellant filed the appeal. The learned Additional District Judge, Ambala, vide judgment and decree dated 3.5.2014 dismissed the appeal and affirmed the judgment and decree of learned Additional Civil Judge (Senior Division), Naraingarh.

I have heard learned counsel for the appellant and have gone through the record.

A perusal of the record specially the judgments and decrees passed by the Courts below shows that there is no misreading of the evidence produced by the parties. The plaintiff had given firstly notice to the defendant to execute the sale deed, which was duly replied. If the plaintiff in the notice had stated that the plot being jointly owned by the defendant with his brother, needs to be partitioned, will not show that he was not ready and willing to perform his part of the contract. Nor, in any way, it can be held that this notice amounts to conditional readiness and willingness of the plaintiff. Rather, it looks that the plaintiff was satisfied with the reply given by the defendant that only 'Khata' is joint and the defendant is in possession of his share, which is lying vacant. After this reply to the notice by the defendant, there is nothing on the record to show that the plaintiff ever put forward his condition that he will execute the sale deed only after the partition of the plot between the defendant and his brother Ramesh Chand.

In the written statement, the defendant admitted the execution of the agreement to sell. He also admitted receipt of ₹30,000/- as earnest money, but while appearing in the witness box, in cross-examination he denied the receipt of ₹30,000/- as earnest money. Further more, in the written statement, the defendant has stated that the plaintiff had not come to the office of Sub-Registrar on 30.6.2004 whereas in cross-examination he had admitted that the plaintiff had met him on 30.6.2004 concerning the execution and registration of the sale deed qua suit property along with balance sale consideration and necessary expenses to be incurred for the execution and registration of the sale deed in Tehsil Naraingarh, which fact also shows that the plaintiff was ready and willing to perform his part of the contract and he went to Sub Registrar's office along with the balance sale consideration and expenses of the registration of the sale deed. The defendant met him in the office of the Sub Registrar on that date, but he specifically denied this fact in the written statement, which means the Court has rightly not believed the version of the defendant. Further more, if the plaintiff reached on 30.6.2004 in the office of the Sub Registrar with remaining sale consideration etc., it also shows that there was no condition by the plaintiff to get the plot first partitioned. Further, I find that if the defendant was knowing that the plaintiff had reached the office of Sub Registrar on 30.6.2004 with balance sale consideration, then how the defendant can take the plea that the agreement stood cancelled and earnest money forfeited. Rather, this fact shows that the defendant was and is not ready and willing to perform his part of the agreement. Filing of the suit by

the plaintiff for specific performance also shows his readiness and willingness to get executed the sale deed. Further more, it is in the evidence that on 6.1.2004, this agreement was executed and sale deed was also executed by the defendant in favour of the plaintiff relating to some other land.

So, keeping in view the above discussion, I find that the learned Courts below have appreciated the evidence in right perspective. In no way, it can be held that the Courts below have misread the evidence. The findings of fact recorded by the Courts below are concurrent and as per evidence and law, which do not require any interference from this Court and the same being correct are upheld. No question of law, much less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same is dismissed.

April 10, 2015.

(Inderjit Singh)
Judge

hsp