IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.576 of 2014 (O&M)
Date of decision : 17.08.2015

Jagdish Singh

...Appellant

Versus

Jasbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ashok Verma, Advocate for the appellant.

Mr. Ajay Jain, Advocate for the respondent.

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AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the judgment and decree dated 04.10.2010, whereby suit for specific performance of the agreement to sell dated 06.02.1999 has been decreed in favour of respondent-plaintiff and judgment and decree dated 07.12.2013, whereby appeal filed by the appellant-defendant has been rejected.

Mr. Ashok Verma, learned counsel appearing on behalf of appellant-defendant submits that as per the agreement to sell dated 06.02.1999, land measuring 30 kanal 17 marla was agreed to be sold by his client to the respondent-plaintiff for a valuable consideration of ₹915859.37 paise and

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earnest money of ₹2,20,000/- had been received on 06.02.1999 and 07.04.1999 and target date for execution and registration of the sale deed was fixed as 20.05.1999. Both the appellant/defendant and respondent/plaintiff were present before the office of Registrar but the sale deed could not be executed for the reasons that Income Tax Clearance Certificate which was to be produced by the appellant-defendant had not been obtained. He further submits that appellant-defendant submitted an application on 25.05.1999 for obtaining Income Tax Clearance (Form-34) and the same was issued on 02.06.1999. In this regard, he sent a legal notice to the plaintiff to execute the sale deed, but, there was no response, which necessitated him to file suit for mandatory injunction on 08.06.1999.

The plaintiff instead of contesting the aforementioned suit filed application under Order 7 Rule 11 and ultimately suit was dismissed.

The suit for specific performance has been filed on 06.05.2002 at the fag end of the expiry of the limitation period and thus there was no readiness and willingness which is the essential requirement to be performed by the plaintiff and, therefore, judgments and decrees are not sustainable and suffers from illegality and perversity, therefore, following substantial questions of law arises for the adjudication of the present appeal:-

1. Whether respondent/plaintiff was ready and willing to perform his part of the agreement?
2. Whether the suit filed at the fag end of the limitation period was maintainable, much less, readiness and willingness was in existence or not?

Mr. Ajay Jain, learned counsel appearing on behalf of respondent-plaintiff submits that appellant-defendant was under obligation to obtain the

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Income Tax Clearance Certificate before the target date. Once the same has not been taken, it clearly decipher that the appellant-defendant was not ready and willing to perform his part of the agreement. His client had prepared the challan for purchasing the stamp paper but same could not be purchased for want of Income Tax Clearance Certificate.

The plaintiff was called upon the defendant to perform his part of agreement to sell by sending legal notice dated 22.04.2002 which was duly replied by the appellant-defendant wherein for the first time they had taken plea that Form-34-A i.e. Income Tax Clearance Certificate has been obtained on 02.06.1999 from the Income Tax Department. He further submits that since parties are closely related, therefore, plaintiff was hopeful that defendant would come forward for performing his part of the agreement to sell and execute the registration of the sale deed. He further submits that appellant-defendant instead of filing suit for mandatory injunction calling upon the respondent/plaintiff therein to comply with the terms and conditions of the agreement to sell. In the entire civil suit, there was no averments with regard to the obtaining or availability of Income Tax Clearance Certificate. Even in the suit for specific performance, the appellant-defendant failed to take up the plea of obtaining Income Tax Clearance Certificate and, therefore, there was no occasion for the respondent-plaintiff to rebut the same by way of filing rejoinder to the application. He further submits that both the Courts below have rendered a finding on the basis of oral and documentary evidence. There is no illegality, much less, perversity nor any substantial questions of law arises for determination in the present appeal.

I have heard learned counsel for the parties and appraised the paper book.

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No doubt, for seeking discretionary relief under Section 20 of the Specific Relief Act, there has to be continuous/perpetual readiness and willingness on part of the plaintiff. The execution of the agreement to sell between the parties to the lis is not in dispute, much less, the target date i.e. 20.05.1999. One of the terms and conditions of the agreement to sell envisage that appellant-defendant had to obtain Income Tax Clearance Certificate in view of the Mandate of Section 230 of the Income Tax Act which was invogue at that relevant point of time. The appellant-defendant though did not plead about obtaining of the Income Tax Clearance Certificate in his suit for mandatory injunction as well as in written statement in the present suit except in the reply to the legal notice. DW7 N.K. Grewal, Assistant Commissioner, Income Tax Department, Delhi has been examined to prove the aforementioned fact.

The aforementioned witness did not prove the authenticity/genuinity of Ex. D6 and rather stated that as and when the Income Tax Clearance Certificate is issued it bears the despatch number. Though, Ex.D6 has been marked to Sub Registrar on 02.06.1999 but it does not bears despatch number.

The said witness, to specific question answered that he did not bring the record of the Despatch, much less, receipt of Despatch Register as it would be lying in the office. The said witness when recalled after lunch and to specific question replied that concerned officer had issued Form-34, the stamp on the said form did not pertain to his department. He did not confirm the authenticity and genuinity of Ex.D6.

Since the respondent-plaintiff was dragged into the litigation which ultimately came to end on 18.09.2001, the respondent-plaintiff was

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hopeful that good sense would prevail upon the appellant-defendant to execute and registration of sale deed but having failed to do so, the limitation period to file the suit would expire which necessitated the plaintiff to send legal notice. Therefore, the aforementioned facts and circumstances would leaves no manner of doubt that appellant-defendant was not ready and willing to perform his part of the contract from the date of agreement till the date of target date and thereafter.

Since, there were contingency clause in the agreement to sell vis-a-vis obtaining of Income Tax Clearance Certificate, which had not been proved to have been obtained on 02.06.1999 through the testimony of DW7, I am of the view that appellant-defendant was not ready and willing to perform his part of agreement to sell but was dilly dallying the matter by dragging the appellant in mis-conceived litigation initiated in June 1999 which continued to September, 2001.

Both the Courts below have appreciated the oral and documentary evidence while granting the relief of specific performance, much less, possession of the property in dispute.

In view of what has been observed above, there is no illegality and perversity, much less, no substantial question of law arises for adjudication of the present appeal.

There is no merit in the present appeal and same is hereby dismissed.

17.08.2015 **(AMIT RAWAL)**
pawan **JUDGE**

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