

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4225 of 2011 (O&M)

Date of Decision: 21.04.2016

Kapoor Singh

... Appellant(s)

Versus

Nishan Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. B.P.S.Virk, Advocate
for the appellant(s).

Mr. Sunil Garg, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present regular second appeal, filed by defendant No.1, against judgment & decree dated 27.4.2011, passed by learned District Judge, Patiala, whereby appeal filed by the plaintiff was partly accepted and judgment & decree of the trial Court was set aside and suit of the plaintiff for recovery of ₹ 20,000/- as earnest money and ₹ 20,000/- as liquidated damages i.e. total ₹ 40,000/- along with interest at the rate of 6% per annum from the date of advance of earnest money i.e. with

effect from 14.11.2000 till realization.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts for the purpose of decision of the present appeal that plaintiff had filed suit for specific performance of agreement of sale dated 14.12.2000 with respect to suit land and earnest money of ₹ 20,000/- was paid at the time of execution of the agreement and the target date for execution of sale deed was fixed to be 15.11.2001. As per plaintiff, he remained present in the office of Sub Registrar, Samana along with balance sale consideration and amount for the purchase of stamp papers and other necessary expenses. Plaintiff waited for defendant No.1 for whole day but he failed to put in appearance. Thereafter, legal notice was issued but defendant No.1 failed to perform his part of the agreement and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that earnest money of ₹ 20,000/- was not received by defendant No.1 and stated that no date for execution of sale deed was fixed. Defendants approached the plaintiff for execution of the sale deed but he put off the matter on one pretext or the other. Defendant No.1 remained present in the office of Sub Registrar, Samana on 15.11.2001 but plaintiff failed to turn up and as such he is not entitled to seek specific performance of agreement.

On these facts, the Court of first instance settled the issues and the parties were put on trial. Both the parties led their respective

evidence. The Court of first instance, after appreciating the entire evidence and material available on record, returned the finding that plaintiff was not ready and willing to perform his part of the agreement and as such suit of the plaintiff was dismissed.

Plaintiff preferred first appeal and the first Appellate Court reversed the findings recorded by the Court of first instance on the point of readiness and willingness to perform his part of agreement on behalf of the plaintiff and partly decreed the suit for recovery of ₹ 20,000/-, which was paid as earnest money and another sum of ₹ 20,000/- as liquidated damages along with interest at the rate of 6% per annum from the date of advance of earnest money i.e. with effect from 14.11.2000 till realization. Aggrieved by passing of the said judgment & decree dated 27.4.2011, present regular second appeal, by defendant No.1, before this Court.

Learned counsel for the appellant/defendant No.1 submitted that the Court of first appeal fell in error while returning the finding that plaintiff was ready and willing to perform his part of the agreement, whereas the Court of first instance had rightly returned the finding that plaintiff was not ready and willing to perform his part of the agreement. Even on the date fixed, plaintiff was not present in the office of Sub Registrar, whereas defendant/appellant remained present there and as such the earnest money stood forfeited and there was no question of reversal of findings having been recorded by the first Appellate Court on the basis of evidence available on the file and the findings returned by the first Appellate Court on the point of readiness

and willingness be reversed and suit of the plaintiff be dismissed in toto.

Learned counsel for respondent No.1 submitted that first Appellate Court has rightly returned the findings because the receipt of earnest money is not disputed in any way and the same has not been refunded back to the plaintiff and the Court of first appeal rightly passed the decree and the present appeal is without any merit and the same be dismissed.

Having considered the matter in its entirety and there being no dispute regarding the fact of execution of agreement dated 14.11.2000 and the target date for registration of the sale deed to be 15.11.2001 and the receipt of earnest money of ₹ 20,000/- is also not disputed. The dispute is only with regard to readiness and willingness on behalf of the plaintiff to perform his part of the agreement. The Court of first appeal rightly returned the findings on the basis of statement of Kapoor Singh, while he was deposing as DW.1 stated that he was having balance sale consideration on 15.11.2001 as he had received a sum of ₹ 3,33,000/- on account of sale price of paddy. The Court of first instance has also rightly observed that on the basis of affidavit of plaintiff (Ex.P2), duly attested by the Executive Magistrate, Samana on 15.11.2001, established the fact that plaintiff remained present in the office of Sub Registrar, Samana on the date fixed for execution of sale deed. More so, plaintiff has come with the plea that he had already purchased the stamp papers valued ₹ 7,000/- for execution of the sale deed and even the sale deed was got executed but defendant remained away from the office of Sub Registrar for execution

of the sale deed. More so, plaintiff has shown his readiness and willingness by issuance of legal notice (Ex.P6) and thereafter by filing civil suit before the Court of first instance.

The first Appellate Court rightly decreed the suit under Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") because in such like cases, where specific performance of the agreement cannot be ordered or should not be ordered, the Court has discretion to grant relief which may not cause undue hardship to either of the parties.

In the present case, the first Appellate Court rightly recorded the findings that execution of agreement and receipt of earnest money being not in dispute and plaintiff having been able to prove his readiness and willingness on the basis of affidavit (Ex.P2) and thereafter issuance of legal notice (Ex.P6) and subsequently by filing suit for specific performance made his intention clear that he was ready and willing to perform his part of the contract, whereas appellant was not ready and willing to do so and the Court of first appeal rightly decreed the suit of the plaintiff while exercising its discretion under Section 20 of the Act, thereby directing the appellant to make payment of ₹ 20,000/-, which was received as earnest money and another sum of ₹ 20,000/- as liquidated damages and payment was to be refunded along with interest at the rate of 6% per annum from the date of advance of earnest money i.e. 14.11.2000 till realization. The said findings returned by learned District Judge, Patiala do not call for any interference and no substantial question of law involved in the present

appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the discussions made above, present appeals is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

April 21, 2016

"DK"