

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1208 of 2016 (O&M)

Date of decision: 21.03.2016

Krishan Kumar and another

...Appellants

Versus

Umed Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. M.K. Garg, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-3406-C-2016

Keeping in view the averments made in the application, the same is allowed. The delay of 86 days in filing the present appeal is hereby condoned.

RSA-1208-2016

The suit for specific performance filed by the plaintiff/respondent was decreed by the trial Court, vide judgment and decree dated 07.10.2011.

2. Aggrieved against the findings of trial Court, the

defendants/appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 18.09.2015.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the defendants/appellants.

4. The brief facts of the case are that an agreement to sell dated 02.02.2006 to alienate the land measuring 30 kanals 8 marlas of land @ Rs.5 lacs was reached between the parties. An earnest amount of Rs.7 lacs was paid to the appellants. The sale deed was to be executed on or before 30.06.2006, subsequently it was extended to 03.11.2006 at the request of the appellants. Thereafter, the appellants had received Rs.9 lacs from the plaintiff/respondent. On 03.11.2006, the plaintiff along with the balance sale consideration and witnesses visited the office of Sub Registrar to perform his part of contract but the defendants/appellants had failed to perform their part of contract. Hence, the present suit.

5. It is contended by learned counsel for the appellant that both the Courts below have gravely erred while passing the

impugned judgments and have failed to appreciate the fact that once the respondent/plaintiff himself was not willing to execute the sale deed and he had received Rs.7 lacs which was given by him to the appellants/defendants, then no decree of specific performance can be granted. The plaintiff was not in a position to pay the balance sale consideration, therefore, the agreement to sell could be extended.

6. Heard, the learned counsel for the appellant.

7. It is admitted that an agreement to sell dated 02.02.2006, Ex.P3 was executed between the parties. The factum of receiving of Rs.7 lacs by the appellants towards earnest money is also not in dispute. The appellants had also admitted in their pleadings regarding the factum of receiving Rs.2 lacs from the plaintiff/respondent, however, they had denied that they were not willing to perform their part of contract. On appreciation of evidence, it has come on record that an amount of Rs.9 lacs was received by the appellant which is duly corroborated by the testimony of the plaintiff, PW-5 Umed Singh. It has also come on record that the defendants/appellant executed the receipt cum time extension document after receipt, Ex.P2 of Rs.9 lacs in favour of plaintiff. Further, the appellant Krishan Kumar had

admitted in his cross examination that plaintiff had made a deposit in his bank account, which itself falsifies the stand of appellant/defendants.

8. Thus, in view of above facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. Therefore, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence.

9. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal.

Dismissed.

21.03.2016

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(JITENDRA CHAUHAN)
JUDGE