

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

RSA No. 394 of 2013 (O&M)
Date of decision: 05.05.2016

Sanjay Kumar and others

...Appellant(s)

Versus

Nafe Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajinder Goyal, Advocate
for the appellants.

JITENDRA CHAUHAN.J.

This regular second appeal has been filed by the defendants against the judgment and decree dated 17.03.2010, passed by Additional Civil Judge (Senior Division), Kaithal (for short “the trial Court”) whereby the suit filed by the plaintiff was partly decreed and; (ii) the judgment and decree dated 23.10.2012, passed by District Judge, Kaithal vide which the appeal filed by the defendant/appellants was partly accepted.

In brief, the plaintiff, Nafe Singh filed suit for specific performance of agreement to sell dated 13.06.2005. It was pleaded by the plaintiff that the defendants agreed to sell the suit land to the plaintiff for a consideration of Rs. 14,91,000/- per acre vide agreement to sell dated 13.06.2005. A sum of Rs. 12,50,000/- was received by the defendants as earnest money. The sale deed was to be executed on or before 20.11.2005. It was also agreed between the parties that the defendants would get the land redeemed from the bank by depositing

loan amount before the date of execution of sale deed. The agreement was executed on behalf of Raj Bala, defendant No. 5 also. A sum of Rs. 1,00,000/- was received by Hukum Singh defendant No.4. The plaintiff paid the loan amount and other expenses of Rs. 7,70,000/- on 17.11.2005 and the same was deposited in the bank account for clearing the loan taken by the defendants. On 21.11.2005 the plaintiff remained present before the Sub-Registrar but the defendants did not turn up. Hence the suit for specific performance.

Upon notice, the defendants appeared and filed written statement. It was pleaded by the defendants that the agreement to sell in question was executed with one Nafe Singh resident of Village Ujhana. No agreement to sell was executed by the defendants with the plaintiff. The agreement was lost during transit from Kaithal to Ujhana. The same was being misused by the plaintiff.

After appraisal of the evidence, the learned trial Court partly decreed the suit of the plaintiff against all the defendants except Raj Bala, defendant No.5. The relief of specific performance was granted to the plaintiff vide judgment and decree dated 17.03.2010 passed by the trial Court.

Feeling aggrieved, the defendants filed appeal before the District Judge, Kaithal. The appeal was partly accepted and the finding of the trial Court granting compensation of Rs. 2,00,000/- by the defendants qua the share of defendant No.5 Raj Bala was reversed. The remaining findings returned by the trial Court were upheld vide

judgment and decree dated 23.10.2012.

Still feeling dissatisfied, the defendants have preferred the present Regular Second Appeal.

On behalf of the appellants, it is contended that both the Courts below have committed grave error in decreeing the suit of the plaintiff. The plaintiff has failed to plead and prove readiness and willingness to perform his part of the contract in terms of Section 16(c) of the Specific Relief Act, 1963. It is further contended that the specific performance cannot be granted in respect of part performance of the agreement and the Courts below ought to have granted compensation to the plaintiffs in terms of Section 12 of the Specific Relief Act, 1963. Further, it is contended that the execution of the agreement in question was not proved by the plaintiff. Learned counsel has placed strong reliance on *I.S. Sikander (D) by LRs Vs. K. Subramani and others 2014(1) R.C.R. (Civil) 236 (SC)*.

I have heard the learned counsel of the appellants and have gone through the record of the case.

In this case, the plaintiff sought the specific performance of the agreement to sell dated 13.06.2005. An amount of Rs. 12,50,000/- was received by the defendants as earnest money. The sale deed was to be executed and registered up to 20.11.2005. Apart from that, the defendants were to get the land redeemed from the bank before the date of execution of the sale deed. It has come in the evidence that the plaintiff always remained ready and willing to perform his part of the

contract. Even the plaintiff remained present before the Sub-Registrar on 21.11.2005 for execution and registration of the sale deed. However, the defendants did not choose to come present. Not only that, a sum of Rs. 6,38,860/- was paid by the plaintiff towards clearing the loan. This all goes a long way to show that the plaintiff remained ready and willing to perform his part of the contract throughout. The ratio of the reported case does not apply to the facts of the instant case.

As regards the non-execution of the agreement to sell by the defendants with the plaintiff, the stand taken by the defendants has been turned down by the Courts below by observing that the receipts, Ex. P-4 and P-5 were proved on record by the plaintiff vide which the earnest money and a sum of Rs. 1,00,000/- were received by the defendants. The defendants could not prove that the agreement to sell was never executed with the plaintiff. Had the stand taken by the defendants been true, they would have examined the person with whom they alleged to have entered into the agreement to sell. Therefore, the plea was rightly rejected by the Courts below.

The last argument of learned counsel for the appellants that the part performance cannot be granted in terms of Section 12 of the Specific Relief Act, 1963, is misconceived inasmuch as the plaintiff is not claiming part performance of the agreement. The claim of the plaintiff is in respect of the whole of the agreement to sell. Eventually, when the Courts below found that the agreement to sell was not signed by Raj Bala, the defendant No.5, the relief against her was rightly

rejected. The provision of Section 12 of the Act does not talk about the part performance in terms of person. It talks about the part performance of the agreement in terms of subject matter of the agreement and when a substantial portion of the agreement can be performed, the Courts should exercise the discretion in awarding the specific performance of the agreement.

In view of the observations made above, the present appeal is dismissed as there is no substantial question of law in the present appeal.

(JITENDRA CHAUHAN)
JUDGE

05.05.2016
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