

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

R.S.A. No.4356 of 2013 (O&M)

Date of decision: 08.01.2016

Chamkaur Singh and ors.

...Appellants

Versus

Palwinder Singh and anr.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sarbjit Singh, Advocate for the appellants.

Jitendra Chauhan, J.

CM-11757-C of 2013

For the reasons contained in the application, same is allowed and delay of 14 days in re-filing the appeal is condoned.

CM-11758-C of 2013

CM is allowed, as prayed for, subject to all just exceptions.

Main Case

This regular second appeal is directed against the judgment and decree dated 04.04.2013, passed by the learned Additional District Judge, Kapurthala, (for short, the 'first Appellate Court') whereby, the appeal filed by the father of appellants namely Swarn Singh (since deceased), against the judgment and decree dated 15.10.2008, passed by

the learned Additional Civil Judge, Sr. Divn., Kapurthala, (for short, the 'trial Court'), has been dismissed, regarding specific performance, but stands decreed for refund of the earnest money with interest.

The father of the appellants (hereinafter referred as 'plaintiff') filed a suit for possession by way of specific performance of the agreement to sell dated 18.06.2001. The learned trial Court vide judgment and decree dated 15.10.2008 dismissed the suit after returning findings on the issues Nos.1 to 6, regarding specific performance, but decreed the suit for the refund of the earnest money with interest.

The appeal filed by the plaintiff/appellants was dismissed by the learned first Appellate Court vide judgment and decree dated 04.04.2013. The cross objections filed by the defendants were also dismissed.

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, this appeal at the behest of the plaintiff/appellants.

The learned counsel contends that the learned trial Court has erred in holding that the plaintiff has failed to prove on the record that he had paid a sum of Rs.1 Lakh out of the balance sale consideration to the defendant/respondent No.1 on 25.10.2001 in the presence of respectables, regarding which a duly sworn affidavit was also filed by Surjan Singh. There is no document produced on the record as has been alleged by

defendant/respondent No.1. The learned Courts below have denied the claim of the plaintiff in the absence of any receipt for payment of Rs.1 lakh. Even if it is proved that the said amount is not paid by respondent-defendant No.1 as alleged by him, then the same cannot be a ground to refuse the specific performance of the agreement to sell in question as time is never essential in the case of immovable property. Lastly, the learned counsel states that there is nothing on record which proves the bonafide of the defendant/respondent No.2 being close relative of defendant-respondent No.1.

I have heard the learned counsel for the appellants and carefully gone through the entire record on file.

The plaintiff (father of the appellants) had filed a suit for possession by way of specific performance of agreement to sell dated 18.06.2001. The learned trial Court vide judgment and decree dated 15.10.2008 dismissed the suit after returning the issue-wise findings that the plaintiff has failed to prove the payment of Rs.1 lacs to the defendant on 25.10.2001. The main point to be decided in this appeal is as to whether the plaintiff is entitled for specific performance of the agreement. Though the time is not the essence of the contract but as per terms of the agreement dated 18.06.2001, execution of the final sale-deed was fixed for 25.05.2002. To show his bonafide, he got marked his presence by getting attested an affidavit from a Notary Public on 27.05.2002, the next working day. But he did not take any step thereafter till 05.04.2004, when

a notice was sent to the vendor. He filed this suit on 25.09.2004. During this interregnum, it is obvious that he was not ready and willing to perform his part of contract. The delay in issuance of notice disentitles the proposed vendee to claim specific performance of the agreement. Both the courts below have returned findings on issue Nos.1 and 4 partly in favour of both the parties. The learned trial Court held that the plaintiff is not entitled to the relief of specific performance of agreement dated 18.06.2001 as he had failed to prove his readiness and willingness and also terms of the agreement stood violated. Further, the plaintiff had failed to prove that he was put in possession of the land on the basis of agreement to sell in question and also failed to show his entitlement of specific performance of the agreement. Therefore, the sale deed in favour of defendant No.2 is not affected and it is held that the defendant No.2 is bonafide purchaser for valuable consideration.

On consideration, 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. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

08.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE