

117

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

**RSA-2126-2016 (O&M)
Date of decision : 06.09.2016**

Hardeep Singh and another

... Appellants

Versus

Gurbachan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 26.04.1999 in respect of a plot measuring 150 sq. yards bearing No.20-E, Shaheed Bhagat Singh Nagar, Ludhiana, has been decreed by both the Courts below.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellants-defendants submits that the defendant No.3 vide allotment dated 03.01.1986 allotted the aforementioned plot to the appellant-defendant. The terms and conditions of the allotment envisage restriction of sale for a period of 10 years. The terms and conditions of the agreement stipulated that the date of registration of the sale deed would be within two months from the date when the appellants-defendants would get the sale deed registered and allegedly there was a stipulation on 16.12.1999 by putting the period of one month. The sale deed in favour of the appellants had been executed on 22.09.2004, whereas the suit has been filed in the year 2003, in essence, the suit was not maintainable being pre-mature as the appellants-defendants did not have title. The Courts below misinterpreted the

provisions of allotment and erroneously exercised the discretion. Clause 13 and 14 of the allotment letter, if read in conjunction leaves no manner of doubt, the discretion ought not to have been exercised.

He, on instructions from their clients, submits that the appellants-defendants are willing to refund the earnest money along with some suitable interest. As regards the compliance of Section 16 (c) of the Specific Relief Act, he submits that the cross-examination of the plaintiffs reveals that they did not have the subsequent balance/money for execution and registration of the sale deed. In fact the readiness and willingness was conspicuously wanting. It is, in this background of the matter, the Courts below abdicated in not referring to the aforementioned facts, thus, urges this Court for setting aside the concurrent findings of fact being erroneous and perverse.

I have heard the learned counsel for the appellants-defendants and appraised the paper book and of the view that the total sale consideration in respect of the aforementioned plot agreed to be sold was for a sum of ₹ 5,75,000/- and the respondent No.1-plaintiff stated to have been paid ₹ 1,00,000/- as earnest money. The pleaded case of the respondent No.1-plaintiff is that over and above ₹ 1,00,000/-, they had also paid certain amount i.e. ₹ 15,000/-, ₹ 8,750/- & ₹ 28,700/- on 15.09.1999, 30.09.2006 & 20.06.2001 respectively and one receipt dated 30.09.2006 is during the pendency of the suit. In all, he had paid ₹ 1,52,480/-. Preceding to the filing of the suit, legal notice was also sent. Had there been any truth in the assertions/averments in the written statement, nothing prevented the appellants-defendants in replying to the legal notice. The suit cannot be said to be premature as the appellants-defendants had acquired the title,

during the pendency of the suit.

As regards the bar, the caveat, was that the Improvement Trust would have a liberty to confiscate the allotment of the plot. Be that as it may, the fact remains that the agreement to sell is of 26.04.1999, whereas the allotment is of 1986 i.e. beyond 10 years, therefore, in my view, the Courts below have rightly applied the provisions of Clause 13 and 14 of the allotment.

As regards the readiness and willingness, it is a settled law that the ready cash, at the time of the execution and registration of the sale deed, is not required. The aforementioned view of mine is fortified from the ratio decidendi culled out by the judgment of Hon'ble Supreme Court in “Azhar Sultana V/s B. Rajamani and others”, 2009 (2) RCR (Civil) 123. In my view, the the respondent No.1-plaintiff had always been ready and wiling and Courts below have rightly exercised the discretion.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

06.09.2016	(AMIT RAWAL)
yogesh	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No