

RSA No.1 of 2015 (O&M)

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

RSA No.1 of 2015 (O&M)

Date of Decision: January 12, 2016

Naresh Kumar

...Appellant

Versus

Wazir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. S.K. Chauhan, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J.:

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Bhiwani, dated 05.04.2012, wherein, the suit of the respondent-plaintiff for recovery of ₹9,00,000/- alongwith interest at the rate of 18% per annum on the basis of the agreement to sell dated 06.02.2006 has been partly decreed with costs entitling him to refund of earnest money i.e. ₹4,50,000/- as paid by him to the appellant-defendant alongwith interest at the rate of 18% from the date of the payment till its realization, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District Judge, Bhiwani, on 26.09.2014.

2. It is the contention of the learned counsel for the

appellant that the appellant-defendant was always ready and willing to perform his part of the contract. He contends that in the pleadings itself, it has been admitted by the respondent-plaintiff that as per the agreement to sell dated 06.02.2006, whereby, the respondent-plaintiff had agreed for purchase of the plot measuring 12 marlas as described in para 1 of the plaint at the rate of ₹3,700/- per square yard, with payment of ₹4,50,000/- as earnest money, the date of execution of the sale deed was fixed as 06.05.2006. Since 06.05.2016 and 07.05.2016 were holidays, the appellant-defendant and the respondent-plaintiff had gone to the office of the Sub-Registrar which clearly indicates the willingness and readiness on the part of the appellant-defendant to execute his part of the contract. He contends that it is, rather, the respondent-plaintiff who had backed out of the agreement by not proceeding to execute the sale deed and has now filed the present suit with a *mala fide* intention to seek refund of double of the earnest money, whereas, the earnest money of ₹4,50,000/- stands forfeited as per the terms of the agreement. He contends that frivolous pleas have been taken by the respondent-plaintiff which could be termed as excuses to wriggle out to the contract which was entered into between the parties as per the agreement to sell dated 06.02.2006. He contends that the judgments and decree passed by the Courts below deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance have gone through the impugned judgments passed by the Courts below.

4. The execution of the agreement to sell dated 06.02.2006 and the receipt of ₹4,50,000/- as earnest money with the date for execution of the sale deed fixed as 06.05.2006, has been admitted by the appellant-defendant Naresh Kumar, who appeared before the trial Court as DW-1. Presence of both the parties in the office of the Sub-Registrar on 08.05.2006, as 06.05.2006 and 07.05.2006 were holidays, shows that the parties were ready and willing to perform their part of the contract with regard to the execution of the sale deed.

5. The appellant-defendant as per the agreement dated 06.02.2006, was to construct a Northern side wall of the disputed plot before the execution of the sale deed as on the other three sides, walls of other owners were already in existence. The respondent-plaintiff went to the appellant-defendant and asked him to show the plot and get it measured and also to show construction of its Northern side wall. The appellant-defendant avoided the matter and assured to do the needful before the execution of the sale-deed. Till and on 08.05.2006, the date when both the parties appeared before the Sub-Registrar, the appellant-defendant could not show the disputed plot, get its measurement and was also unable to give

possession of the said plot and rather the appellant-defendant refused to do so, the respondent-plaintiff got marked his presence before the Sub-Registrar, Bhiwani, by way of submitting an affidavit. The respondent then moved an application dated 18.05.2006 for demarcation of the plot through the authorities, which was done on 06.06.2006, then it came to light that the disputed plot was in khasra No.742 and not in khasra No.743. One Smt. Sewa Pati constructed the Northern side boundary wall and on enquiry, it was revealed that she had purchased the plot vide sale deed dated 13.03.2006 from one Om Paskash which was regarding land comprising in khasra No.742. Further inquiries revealed that the appellant-defendant had previously on 25.11.2000, also entered into an agreement to sell of the plot with one Smt. Shakuntla. When the dispute regarding the actual possession of the plot arose between the parties to the agreement, he was not able to give possession of any plot comprised in khasra No.743 with the boundaries specified in the agreement. She filed a suit for recovery of the amount which she had paid to the appellant-defendant. The said suit was decreed on 27.01.2006. Appellant-defendant knowing well in the light of the decree that the disputed plot on the spot is not in khasra No.743, rather was in-fact in khasra No.742, proceeded to enter into an agreement with the respondent-plaintiff dated 06.02.2006, taking the benefit of the revenue entries which depicted such a plot in khasra No.743, of

which he was not in possession. Respondent-plaintiff was always ready and willing to perform his part of the contract but the appellant-defendant was not able to deliver the possession of the plot as he had nothing at the spot which he could transfer in favour of the respondent-plaintiff and had cheated the respondent-plaintiff and was in violation of the contract.

6. The appellant-defendant has taken a plea that there is, in fact, plot in existence for which an agreement to sell was entered into between the parties and has denied the assertion of the respondent-plaintiff and the appellant-defendant was in possession of the property in dispute. On considering the evidence which has been brought on record, the Courts have proceeded to hold that the appellant-defendant was not in position to deliver the possession of the plot in dispute specially in the light of the fact that the appellant-defendant Naresh Kumar while appearing before the Court as DW-1, admitted that he is not in possession of the suit property. He admitted that he had locked the gate of the plot in dispute but later on, the lock was broken by one Sube Singh, brother of Smt. Shakuntla and thereafter, he never visited the spot. In the light of the categorical admission by the appellant-defendant with regard to the filing of the civil suit by Smt. Shakuntla Devi and the judgment and decree ordering refund of earnest money alongwith interest, the findings as recorded by the Courts below cannot be said to be

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without any basis or justification or contrary to the pleadings and evidence brought on record. The judgments as passed by the Courts below ordering refund of the earnest money alongwith interest from the date of the payment till its realization, cannot be faulted with.

7. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

8. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

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In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree, has become infructuous.

Disposed of as such.

January 12, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**