

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

**R.S.A No.26 of 2016(O&M)
Date of decision :03.11.2016**

Jagdish

..... Appellant

Versus

Ram Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rajbir Singh Arya, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 30.09.2015 passed by the learned Additional District Judge, Karnal, whereby the appeal filed by appellant-defendant no.1 against the judgment and decree dated 30.11.2011 passed by the learned Civil Judge (Sr. Division), Karnal, in civil suit no. 470 of 2008 has been dismissed.

2. Plaintiffs-respondents no.1 and 2 filed the suit for possession by way of specific performance of the agreement to sell dated 14.02.2006 against the defendants. In the alternative, they prayed for recovery of double the amount of the earnest money with a consequential relief of permanent injunction.

3. As per averments in the plaint, appellant-defendant no.1 executed two agreements to sale dated 14.02.2006 in favour of the plaintiffs for the sale of the land measuring 32 K 16 M detailed and described in para no. 2 (a) to (d) of the plaint at the rate of Rs.7 lac per

acre and received the earnest money of Rs. 7 lacs and for the sale of the land measuring 36 Kanals detailed and described in para no.5 (a) to 5 (c) of the plaint and received Rs. 3 lacs as earnest money. The said agreements were executed by defendant no.1 on the basis of the agreements to sell dated 17.11.2005 executed by defendants no.2 and 3 in his favour. As per the stipulations in the agreement dated 14.02.2006, the target date for execution of the sale deed was 15.11.2006. As per the terms and conditions of the agreement, in case defendant no.1 failed to get the sale deed executed within the stipulated period, the plaintiffs will have a right to get the sale deed executed through the process of law or to recover double the amount of the earnest money. It is further pleaded that the plaintiffs were always ready and willing to perform their part of contract. Defendants failed to comply with the terms and conditions of the agreement. Hence the suit.

4. Appellant-defendant contested the suit on the plea that it was clearly mentioned in the agreement that defendant no.2-Kashmir Singh was the owner of the land in dispute and he has entered into an agreement to purchase the said land from Kashmir Singh vide agreement to sell dated 17.11.2005. He was ready to get the sale deed executed from defendants no.2 and 3 and also issued them a legal notice before the target date. He was ready and willing to get the sale deed executed and registered in favour of the plaintiffs. But, neither the plaintiffs nor defendants no.2 and 3 came to the office of Sub-Registrar on the target date to perform their part of contract. He has got his presence marked in the office of Sub-Registrar, Nilokheri. It is further pleaded that appellant-

defendant has already filed two civil suits against defendants no.2 and 3 for specific performance and also got registered a criminal case. With these pleas, he pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 10.04.2010:-

1. Whether the defendant no.1 entered into an agreement to sell the suit property on 17.11.2005 and received a sum of Rs. 7.00 lacs as earnest money from the plaintiffs?OPP
2. Whether the plaintiffs were and still ready and willing to perform their part of contract, but the defendants have failed to do so?OPP
3. Whether the plaintiffs are entitled to refund of earnest money along with compensation as prayed for?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiffs have no locus standi and cause of action to maintain the present suit?OPD
6. Whether the plaintiffs have not come to the Court with clean hand. If so, its effect?OPD
7. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court partly decreed the suit of the plaintiff-respondent no.1 against defendant no.1 for recovery of Rs. 10 lacs along with interest at the rate of 6% per annum from the date of decree till realization vide impugned judgment and decree dated 30.11.2011.

7. Aggrieved with the aforesaid judgment and decree, appellant-defendant preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Karnal vide impugned judgment and decree dated 30.09.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Rajbir Singh Arya, Advocate, learned counsel for appellant and have carefully gone through the record of the

case.

9. Initiating the arguments, learned counsel for the appellant contended that appellant-defendant no.1 was already ready and willing to perform his part of contract. The plaintiffs were fully aware that appellant-defendant no.1 was not the owner of the suit property at the time of agreement dated 14.02.2006. The said agreement was executed on the basis of the agreements to sell dated 17.11.2005 executed in his favour by defendants no.2 and 3. He further contended that defendant no.1 has issued the legal notice to the plaintiff as well as defendants no.2 and 3 for execution of the sale deed. But, they did not turned up in the office of Sub-Registrar, so the sale deed could not be executed due to their default. He contended that the plaintiffs have already given up their claim for specific performance. They were not entitled for refund of the earnest money as they were not ready and willing to perform their part of contract and had committed default. Thus, he contended that the suit has been wrongly decreed by the learned Courts below.

10. I have duly considered the aforesaid contentions.

11. The execution of the agreement to sell dated 14.02.2006 by appellant-defendant no.1 in favour of the plaintiffs is not disputed. This fact is also not disputed that on the date of execution of the said agreements and even on the target date fixed for execution of the sale deed, the present appellant has not acquired any title to the suit property. So, he was not in position to execute the sale deed of the land in dispute in favour of the plaintiffs. Once, the appellant-defendant was not having any title to the suit property to execute the sale deed in favour of the

plaintiffs, so he is estopped to raise the plea that the plaintiffs were not ready and willing to perform their part of contract. It was for the appellant-defendant to have acquired the title of the suit property before the target date and then to execute the sale deed in favour of the plaintiffs. But, he had defaulted in that regard.

12. As already discussed, the appellant-defendant has not disputed the execution of the agreement to sell and receipt of the earnest money. As the appellant-defendant was not in a position to execute the sale deed in pursuance of the agreements to sell dated 14.02.2006, so he was bound to refund the earnest money received by him from the plaintiffs.

13. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No