

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

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Regular Second Appeal No.4755 of 2015 (O&M)
Date of Decision: March 10, 2016

Ram Gopal

...Appellant

Versus

Naveen Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. J.K. Goel, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 03.08.2015 passed by the Additional District Judge, Palwal, whereby the appeal preferred by the respondent-plaintiff challenging the judgment and decree dated 18.03.2013 passed by the Additional Civil Judge (Senior Division), Hodal, whereby the suit for possession by way of specific performance of the agreement to sell dated 27.09.2004 was dismissed, has been accepted.

2. It is the contention of learned counsel for the appellant that the respondent-plaintiff has not been able to prove the readiness and willingness to perform his part of the contract. To assert this, he contends that as per the agreement to sell dated 27.09.2004, the consideration amount was fixed at ₹3,00,000/-, out of which an amount of ₹2,60,000/- was paid to the appellant-defendant as part payment. The date for execution of the sale deed was fixed as 26.09.2005. Thereafter the date was extended for 05.06.2006 and the legal notice has thereafter been served on 29.05.2007 and the suit filed on 10.08.2007. This clearly shows that the respondent-plaintiff had been delaying the execution of the sale deed.

Merely an amount of ₹40,000/- was required to be paid to the

appellant-defendant, which would have been the total consideration amount of ₹3,00,000/- as an amount of ₹2,60,000/- had already been paid at the time of execution of the agreement to sell. He, thus, contends that the findings as recorded by the Lower Appellate Court cannot sustain. In support of this contention, he places reliance upon the judgment of the Supreme Court passed in case titled as *M/s. J.P. Builders and anothers Versus A. Ramadas Rao and anothers 2011 (1) SCC 429*.

3. His further contention is that the respondent-plaintiff has taken a friendly loan of ₹2,60,000/- from the appellant-defendant and no agreement to sell dated 27.09.2004 Exhibit P-1 was executed, in fact this agreement to sell is a result of fraud and, therefore, the same could not have been relied upon for decreeing the suit of the respondent-plaintiff. He contends that had it not been a loan, there was no reason why firstly the date for execution of the sale deed was fixed as 26.09.2005 when only ₹40,000/- was the remaining amount to be paid out of the consideration amount of ₹3,00,000/- and similarly why the extension was sought for execution of the sale deed and then the legal notice served after almost one year to the extended date fixed. He on this basis contends that the appeal deserves to be allowed by setting aside the judgment and decree dated 03.08.2015 passed by the Additional District Judge, Palwal and dismissing the suit of the respondent-plaintiff.

4. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgment.

5. The due execution of the agreement to sell dated 27.09.2004 Exhibit P-1 could not be disputed by the counsel for the appellant. Similar

is the position with regard to the mutually agreed extension by writing dated 26.09.2005 Exhibit P-2 to get executed and registered the sale deed. On the date fixed for execution and registration of the sale deed, the respondent-plaintiff had gone to the office of the Sub Registrar, Hodal, which has been specifically pleaded and stated by the respondent-plaintiff but no suggestion has been put to him that he did not appear before the Sub Registrar on 05.06.2006 to get the sale deed executed and registered in his favour. There is, thus, no denial on the part of the appellant-defendant to this effect. The receipt of the legal notice dated 29.05.2007 Exhibit P-3 has also not been denied and the respondent-plaintiff has specifically stated that he was always ready and willing to perform his part of the contract as per the terms and conditions of the agreement. All this proved beyond doubt that the respondent-plaintiff was always ready and willing to perform his part of the contract, whereas appellant-defendant has failed to perform his part as he did not appear before the Sub Registrar on 05.06.2006, the date fixed for execution and registration of the sale deed. The judgment of the Supreme Court in *M/s. J.P. Builders' case (supra)* relied upon by the counsel for the appellant, thus, would not be applicable to the facts of the present case.

6. The contention of learned counsel for the appellant that no agreement to sell dated 27.09.2004 Exhibit P-1 was executed by him and it was only a loan of ₹2,60,000/- which has been extended to him by the respondent-plaintiff but the said plea cannot be accepted in the light of the extension as per agreement dated 26.09.2005 Exhibit P-2, where both the parties mutually agreed to get the sale deed executed and registered on 05.06.2006. Had the appellant-defendant not executed the agreement to sell,

there was no question of his agreeing for extension of the date for execution of the sale deed as per the agreement to sell.

7. No other point has been raised or argued by the counsel for the appellant.

8. The findings as recorded by the Lower Appellate Court, thus, cannot be faulted with as the same are based upon proper appreciation of the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.11421-C of 2015, stands disposed of as infructuous.

March 10, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE