

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5179 of 2015 (O&M)

Date of Decision: 14.01.2016

Surinder Kaur

... Appellant(s)

Versus

Surjit Kaur

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gurcharan Dass, Advocate
for the appellant.

Shekher Dhawan, J.

The defendant/appellant has filed this present regular second appeal against concurrent findings of both the Courts below whereby suit filed by the plaintiff for specific performance of agreement dated 17.5.2004 was decreed and first appeal was dismissed by First Appellate Court.

For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. Relevant facts of the case are that parties to the litigation entered into an agreement of sale with respect to suit property. As per plaintiff, the earnest money of ₹ 1,00,000/- was paid in the presence of witnesses. The target date

fixed for execution of the sale deed was 15.1.2005 and the balance sale consideration was to be paid on that date. As per plaintiff, she had been ready and willing to perform her part of agreement and in pursuance of that, she appeared in the office of Sub Registrar, Mansa on 17.1.2005 (15.1.2005 & 16.1.2005 being holidays) along with the requisite charges including registration charges. The defendant executed the sale deed pertaining to land measuring 11 kanals 8 marlas on 22.4.2005 as per terms & conditions of the agreement in favour of Punjab Singh, brother of the plaintiff. However, the defendant put off the matter to execute the sale deed pertaining to the property measuring 4 kanals 12 marlas on one pretext or another. Defendant refused to execute the sale deed one week prior to filing of the suit and as such necessity of filing present suit.

The defendant contested the suit taking the plea that the plaintiff is estopped from filing the present suit on account of her own act and conduct. The defendant was admittedly owner in possession of land measuring 55 kanals 18 marlas to the extent of $\frac{1}{2}$ share. The defendant also conceded that she entered into agreement for sale of the property measuring 16 kanals including the disputed property measuring 4 kanals 12 marlas. The said property was to be sold at the rate of ₹ 5,00,000/- per acre and not for ₹ 2,00,000/- per acre as mentioned in the agreement. Earnest money of ₹ 1,00,000/- has already been adjusted. The plaintiff was not ready to get the sale deed executed as she was not ready with the balance amount and as such suit deserves dismissal.

On these facts, following issues were framed and settled by the Court of first instance and the parties were put to trial:

- "1) *Whether defendant executed agreement dated 17.5.2004 in favour of plaintiff and received ₹ 1,00,000/- as earnest money from plaintiff? OPP*
- 2) *Whether the plaintiff remained ready and willing for the performance of the contract? OPP*
- 3) *Whether the plaintiff is entitled to possession of the suit land as a result of specific performance of the agreement? OPP*
- 4) *Whether the suit is within limitation? OPP*
- 5) *Whether the plaintiff has got no locus-standi and cause of action to file the present suit? OPD*
- 6) *Whether the plaintiff is estopped by her own act and conduct from filing the suit? OPD*
- 7) *Whether the plaintiff has concealed material facts from the Court, if so, its effect? OPD*
- 8) *Whether the defendant is entitled to the alternative relief of damages as prayed for? OPP*
- 9) *Whether the defendant is entitled to special costs from the plaintiff under Section 35-A CPC? OPD*
- 10) *Relief."*

Both the parties led their respective evidence and after appreciating the entire evidence, learned Civil Judge (Senior Division), Mansa decreed the suit of plaintiff for specific performance of

agreement after receiving the balance sale consideration. The defendant preferred an appeal before First Appellate Court but remained unsuccessful and as such necessity of filing second appeal before this Court.

Learned counsel for the appellant submitted that infact plaintiff was not ready and willing to perform her part of the agreement with respect to remaining land of 4 kanals 12 marlas. Though sale deed with regard to 11 kanals 8 marlas has already been executed on 22.4.2005 and earnest money of ₹ 1,00,000/- has already been adjusted. If plaintiff was ready and willing to perform her part of the agreement on 22.4.2005, there was no reason or occasion for non-execution of the sale deed with respect to land measuring 4 kanals 12 marlas as well.

Learned counsel for the appellant has also submitted that thereafter the plaintiff waited till the fag end of period of limitation. Even legal notice was issued on 22.4.2005 and suit was filed on 17.5.2007 when the limitation period of three years was almost complete. However, both the Courts below have not considered these facts which duly established on file that infact the plaintiff was not ready and willing to perform her part of the agreement with respect to remaining land of 4 kanals 12 marlas and the suit of the plaintiff with respect to the said suit property was liable to be dismissed.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record, this Court is of the considered view that most of the facts are not disputed that the

execution of agreement dated 17.5.2004 stands admitted by the present appellant as there is no dispute regarding receipt of earnest money of ₹ 1,00,000/- and the target date for execution of the sale deed to be 15.1.2005. Thereafter, even sale deed was executed with respect to 11 kanals 8 marlas of land on 22.4.2005. As regard to plea taken by learned counsel for the appellant that there was no willingness and readiness on the part of the plaintiff in this case, the said plea does not find any support from the record available on the file. It has come on the file by way of evidence that the plaintiff had put in appearance in the office of the Sub Registrar, Mansa on the date fixed for execution of the sale deed on 17.1.2005 (15.1.2005 & 16.1.2005 being non-working days in the office of the Sub Registrar). Thereafter, the present suit for specific performance of agreement was filed after issuance of legal notice to the present appellant. Merely saying that the suit was filed at the fag end of limitation period of three years does not create any legal bar for filing of suit or does not make out a case in any way that the present case for specific performance is not maintainable. Nothing can be read in between the lines that the plaintiff was not ready and willing to perform her part of the agreement, whereas the plaintiff has done each and everything which was possible on her part to perform the agreement. To the contrary, the defendant has never taken any step to show that he was willing and ready to perform his part of the agreement and for that purpose no notice etc. was issued by him. It is not disputed in any way that the suit has been filed within the period of limitation as the date of agreement was 17.5.2004 and civil suit was

filed on 17.5.2007.

Both the Courts below have recorded concurrent findings regarding execution of the agreement for valid consideration and readiness and willingness on the part of the plaintiff and the said concurrent findings do not call for any interference by this Court. There is no substantial question of law involved in this case. As such, the present regular second appeal is not maintainable and the same stands dismissed, in limine.

(Shekher Dhawan)
Judge

January 14, 2016
"DK"