

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

RSA No.672 of 2016 (O&M)

Date of Decision: 12.02.2016

Satnam Singh & another

. . . Appellants

Versus

Anand Kishore & others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Milap Singh Bhatti, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral)

Challenge in this appeal is to the judgment and decree passed by Additional Civil Judge (Senior Division) Amritsar dated 28.08.2012, whereby the suit for possession by way of specific performance of agreement to sell dated 28.11.2005 of land measuring 30 kanals 4 marlas as detailed in the heading of the suit situated in Village Kaler Mangat, Tehsil & District Amritsar along with rights of payment of balance consideration at the rate of Rs.7,25,000/- per acre with consequential relief of permanent injunction restraining the respondents-defendants from further selling, transferring, mortgaging leasing out or alienating in any manner the suit land, has been decreed,

appeal as preferred by the appellant-defendant dismissed by the Additional District Judge, Amritsar, on 18.12.2015.

2. It is the contention of the learned counsel for the appellant that in the agreement to sell dated 28.11.2005, the only stipulation provided for was that in case of default on the part of appellant-defendant in executing the sale deed upto 15.05.2006, the respondent would be entitled to recover double the amount of earnest money. He thus contends that there being no specific stipulation in the agreement to sell that the respondent/plaintiff could file a suit for specific performance of agreement to sell, the suit itself is not maintainable. His further contention is that the respondent-plaintiff has not been able to prove the availability of the remaining amount of consideration which he was required to bring on 15.05.2006 for the execution of the sale deed. Having not proved the said requirement of the statute, the readiness and willingness on the part of respondent-plaintiff could not have been affirmed by the Courts below. Assertion has also been made that the respondent-plaintiff has not been able to prove his presence in the office of Sub Registrar on 15.05.2006 (Ex.PW4/3) as the documents i.e. the application and affidavit has not been proved in accordance with law. He, therefore, prays that findings recorded by the Courts below cannot be sustained and deserves 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 but find myself not in a position to accept his contentions.

4. The agreement to sell dated 28.11.2005 (Ex.P1) has not been disputed as also the receipt of sum of Rs.5 lacs as earnest money. First assertion of counsel for the appellant is that the suit itself would not be maintainable as there is no specification in the agreement to sell dated 28.11.2005 that suit for specific performance of the agreement to sell could be resorted to by the respondents-plaintiffs for due execution of the sale deed in case of default on the part of the appellants-defendants which cannot be accepted in the light of the fact that the respondent-plaintiff as per his assertion has been able to prove the readiness and willingness to perform his part of contract as he has been able to show his presence before the Sub Registrar, Amritsar on the stipulated date for the execution of the sale deed i.e. 15.05.2006 on the basis of the affidavit and the application Ex.PW4/3. Merely because it has been mentioned in the agreement to sell that the respondent would be entitled to double the amount of the earnest money in case of default on the part of the appellant, would not foist or dis-entitle him to the legal remedy which he is entitled to avail of if the contract is enforceable in law. It is not in dispute that the agreement to sell is duly and validly executed contract. If that be so, respondents-defendant could seek enforcement of valid agreement/contract by filing the specific agreement to sell which is permissible in law. Even if there was a specific stipulation which dis-entitle the filing of the suit for specific performance, the same would still not debar the appellant-defendant to the said contract through specific performance especially when the same is in accordance with law. The agreement being admittedly legal and valid, the rights which flow from the said agreement can be enforced as per

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the law which is applicable to the said contract. The learned Lower Appellate Court, therefore, has rightly relied upon the judgment of Delhi High in **Tanu Goel & Anr. Versus Girish Chopra & Ors 2012 (1) Civil Court Cases 150 (Delhi)**.

5. The contention of learned counsel for the appellant that readiness and willingness on the part of respondent-plaintiff to perform his part of contract has not been proved, but this contention also cannot be accepted as it is a positive assertion of the plaintiff that at the time when he went to the office of Sub Registrar for registration of the sale deed on 15.05.2006, he had taken the remaining sale consideration amount with him. The balance consideration amount being available with him on the stipulated date, the same cannot be faulted with especially when on cross-examination of respondent-plaintiff he had even specified the amount which was brought by him which proved the availability of the money with him at that time he visited the office of Sub Registrar, Amritsar. The cross-examination has been read over to me by learned counsel for the appellant and I do not find anything in the said cross-examination which would indicate that respondent-plaintiff was not having the remaining amount of sale consideration with him on 15.05.2006, the date stipulated for registration of the sale deed.

6. Apart from proving the presence before the Sub Registrar on 15.05.2006, immediate steps were taken by the respondent-plaintiff calling upon the appellant-defendant to execute the sale deed as on 24.05.2006, legal notice (Ex.PW4/5) was served upon the appellant-defendant for the said purpose. Further the suit also has been immediately filed thereafter by the respondent-plaintiff on 15.06.2006,

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which is within the period of one month of the stipulated date i.e. 15.05.2006. All these facts clearly establish the readiness and willingness on the part of the respondent-plaintiff to perform his part of contract rather it appears that the appellant-defendant had been avoiding the contract. The findings as recorded by the Courts below, thus, cannot be said to be without any basis or on non-consideration of the relevant pleadings, evidence and factors.

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 appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

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In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

**[AUGUSTINE GEORGE MASIH]
JUDGE**

12.02.2016
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