

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

**Regular Second Appeal No.3372 of 2014 (O&M)
Date of Decision: April 07, 2016.**

Dharambir

.....APPELLANT(s).

VERSUS

Attar Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.D. Yadav, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal by defendant Dharambir against the judgment and decree passed by learned Additional Civil Judge (Senior Division), Jhajjar, decreeing the suit of the plaintiff for possession by way of specific performance of agreement to sell dated 01.02.2005. The defendant was directed to execute the sale deed in favour of plaintiff as per agreement dated 01.02.2005 on receiving balance sale consideration of ₹34,000/-. The appeal filed by the defendant was dismissed by learned District Judge, Jhajjar.

2. The case of the plaintiff, in brief, is that the defendant agreed to sell his 1/8th share in the land measuring 63 kanals 18 marlas situated in village Sulodha, Tehsil and District Jhajjar for a consideration of ₹2,20,000/- and executed agreement dated 01.02.2005. The defendant received a sum of

₹1,86,000/- as earnest money from the plaintiff and agreed to execute and register the sale deed on or before 31.01.2006 on receipt of balance sale consideration. The plaintiff requested the defendant several times before 31.01.2006 to execute the sale deed and on stipulated date i.e. 31.01.2006, he remained present in the office of Sub Registrar with balance sale consideration and other expenses but the defendant did not turn up. The plaintiff got his affidavit to this effect attested. The plaintiff has always been ready and willing to perform his part of the agreement but the defendant failed to do so. Hence, this suit.

3. The defendant denied the execution of the agreement and receipt of earnest money.

4. Both the Courts below, while decreeing the suit, held the agreement dated 01.02.2005 as duly proved and also recorded finding that plaintiff has always been ready and willing to perform his part of the agreement.

5. I have heard learned counsel for the appellant-defendant and have gone through the paper-book with his assistance.

6. Learned counsel for the appellant has put forth three plea while challenging the findings of the Courts below and to support the contention of defendant that he never executed the agreement to sell; firstly, that after the payment of major portion of the sale consideration, there was no reason for plaintiff to wait for one year for execution and registration of the sale deed; secondly, there was no reason why the plaintiff had not taken possession of the suit land despite paying major portion of the sale consideration; thirdly,

the plaintiff did not give any notice to defendant before filing the suit as the

date for execution and registration of the sale deed was fixed as on or before 31.01.2006 and it was incumbent upon the plaintiff to issue notice as and when he had to get to the sale deed executed and registered.

7. Both the Courts below have relied on the statements of marginal witness of the agreement to sell and plaintiff while reaching the conclusion that execution of the agreement and payment of earnest money is duly proved. Learned counsel for the appellant has not pointed out that the findings of the trial Court are based on misreading of evidence on record. The date for execution and sale deed was fixed by the parties as on or before 31.01.2006 and the present suit was filed on 07.02.2006 i.e. a period of seven days after the stipulated date. The plaintiff while appearing as PW3 has stated that he has been requesting the defendant to execute and register the sale deed in his favour. Even if, the date for execution and registration of the sale deed is “upto 31.01.2006”, the last date fixed was 31.01.2006 and the defendant was required to remain present in the office of Sub Registrar on that day. Though the plaintiff has not given any written notice but asking the defendant to execute the sale deed is sufficient notice to him to execute the sale deed. Moreover, the plea raised by appellant is of denial of execution of agreement. It is nowhere his case that he was ready and willing to perform his part of agreement and it was plaintiff, who committed default in performance of his (plaintiff's) obligation under agreement.

8. The other two arguments advanced by learned counsel for the appellant carry no weight as the date for execution and registration of the sale deed was fixed with the consent of both the parties. The fact that

plaintiff has not taken the possession despite paying earnest money of

₹1,86,000/- also create no shadow of doubt about this transaction as plaintiff had filed the suit within seven days of the stipulated date fixed for execution and registration of sale deed. No adverse inference could be recorded against the plaintiff on this score as the defendant had not come up with any plea regarding the circumstances which led to the execution of the agreement by him.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

April 07, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE