

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

RSA No.1812 of 2010 (O&M)

Date of decision : 13.09.2017

Ballu Ram and others

...Appellants

Versus

Parduman Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Deepali Puri, Advocate for the appellants.

Mr. Vipin Mahajan, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell dated 05.01.1998.

Both the Courts below after appreciating the evidence available on the file decreed the suit for specific performance of the agreement to sell. It was held that under the agreement to sell, the possession was delivered to the plaintiff and he continues to be in possession thereof.

Learned counsel for the appellants has submitted as under:-

- i) Plaintiff has failed to prove readiness and willingness which is sine qua non for decreeing the suit for specific performance.
- ii) Suit is bad as the agreement to sell was with respect to 36 kanals 14

marlas whereas suit is filed with respect to land measuring 36 kanals 12 marlas only. Hence, part performance of the agreement to sell cannot be granted.

- iii) One of the attesting witness namely Satpal had appeared on behalf of the defendants. However, the statement given by Satpal before Revenue Authorities i.e. Ex.P19 has been relied upon by the trial Court, although, such statement was not put to Satpal.

On the other hand, learned counsel for the plaintiff-respondents has supported the judgment passed by the trial Court. He has submitted that in the written statement, the agreement to sell was denied. It was claimed that the agreement to sell was forged and fabricated. Plaintiff on the target date i.e. 31.12.1998 got his presence marked before the Sub-Registrar as the defendants did not turn up for execution and registration of the sale deed. He has further brought to my notice that before the target date, plaintiff had sent a registered notice on 29.12.1998 and telegram dated 30.12.1998. However, defendants did not take any steps for execution and registration of the sale deed.

He has further submitted that there was a mutual mistake in the agreement to sell as area of khasra no.43/R/21 is in fact of 6 kanals 8 marlas as per the jamabandi whereas in the agreement to sell, it was mentioned as 6 kanals 10 marlas, and hence, the suit was filed for 36 kanals 12 marlas.

I have considered the submissions of both the counsel and with their able assistance gone through the judgments passed by the Courts below.

In the present case, the readiness and willingness of the

plaintiff is proved from the four facts. Plaintiff serves a notice upon the defendants on 29.12.1998. Defendants do not reply. Thereafter, the plaintiff sends a telegram dated 30.12.1998 to the defendants but there is no reply. Thereafter, the plaintiff visits the office of the Sub-Registrar and gets his attendance marked. Further there is a specific assertion in the plaint that the plaintiff has always been ready and willing to perform his part of the contract. On the other hand, defendants had taken a stand that the agreement to sell is forged and fabricated.

In these circumstances, I do not find any force in the submissions of the learned counsel for the appellants.

Plaintiff has been making all efforts to get the sale deed executed. In the notice, plaintiff had called upon the defendants to come and execute the sale deed. Same was the request in the telegram. Plaintiff visited the office of Sub-Registrar. Hence, plaintiff was always ready and willing to perform his part of the contract.

Next submission of the learned counsel is that the suit is bad for partial performance. Although defendants did not raise such ground before the Courts below neither in the pleadings nor in the evidence or at the time of the arguments, however, I allowed the counsel for the appellants to raise this point.

Learned counsel for the respondents has fairly explained that in fact the area of one khasra number i.e. 43/R/21 was wrongly mentioned as 6 kanals 10 marlas whereas it was 6 kanals 8 marlas. Counsel for the appellants could not show that area of this khasra number was 6 kanals 10 marlas. In these circumstances, once there was a mutual mistake with

respect to the area of land of one particular khasra number, the plaintiff cannot be denied the relief of specific performance of the agreement to sell.

Next argument of learned counsel is that Satpal, the marginal witness has been examined by the defendants. His previous statement in the revenue proceedings has been relied upon by the Court when such statement having been put to Satpal, the marginal witness.

I have considered the submission. The agreement to sell is proved by the statements of the plaintiff who has been examined as PW4 and another marginal witness i.e. Iqbal Masih-PW5 has been examined. Even if the statement of Satpal is ignored, the agreement to sell still stands proved. Plaintiff has also produced the statement of account of Milkhi Ram to prove that earnest money was paid and deposited.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

13.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No