

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

RSA No.2931 of 2011 (O&M)

Date of decision : 07.09.2017

Rajesh Kumar

...Appellant

Versus

Hanuman and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prithvi Raj Yadav, Advocate for the appellant.

Mr. Sanjay Mittal, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for permanent injunction restraining the defendants from interfering in his possession. Plaintiff also sought a decree for specific performance of the agreement to sell, if the defendants are proved to be legal representatives of Smt. Shanti Devi widow of Krishan. In the alternative, plaintiff had also prayed for passing a decree for recovery of ₹1,40,000/-.

Plaintiff had pleaded that late Smt. Shanti Devi had entered into an agreement to sell with respect to the plot in question with the plaintiff for a total sale consideration of ₹1,40,000/- and Shanti Devi had received ₹90,000/- as earnest money. Plaintiff had further pleaded that as

per agreement to sell, the possession of the plot was also handed over to the plaintiff. As per agreement to sell, the date for execution and registration of sale deed was fixed as 10.11.1999. Smt. Shanti Devi died on 07.10.1999 i.e. before the date fixed for execution and registration of the sale deed. Plaintiff filed a suit for permanent injunction against the defendants with the assertion that his possession is being interfered with. Plaintiff also sought a decree for specific performance of agreement to sell dated 06/07.05.1997.

Defendants, on the other hand, pleaded that the defendants have become owner of the property in dispute on the death of Smt. Shanti Devi. Defendants disputed that the possession of the suit property was given to the plaintiff. It was admitted that Smt. Shanti Devi had died issueless. It was further pleaded that Smt. Shanti Devi never entered into an agreement to sell with the plaintiff.

Learned trial Court after appreciating the evidence available on the file, held that the agreement to sell is proved. Even payment of ₹90,000/- as earnest money is also proved. Learned trial Court further found that the plaintiff is in possession of the suit property pursuant to the aforesaid agreement to sell. However, the learned trial Court refused to grant specific performance of the agreement to sell on the ground that plaintiff has asserted in the plaint that the defendants have no concern with the suit property.

Learned Court further found that plaintiff has failed to prove his readiness and willingness to perform his part of the contract throughout. Learned Court further found that the plaintiff did not issue notice to the

defendants before filing the suit and, therefore, plaintiff was not ready and willing to perform his part of contract.

Two appeals were preferred. One by the plaintiff and other by the defendants. Learned First Appellate Court dismissed both the appeals. Learned First Appellate Court further held that it is not proved as to how much area was owned by Smt. Shanti Devi, therefore, decree for specific performance cannot be granted.

I have heard learned counsel for the parties at length and with their able assistance gone through record of the case.

In my opinion, the following substantial questions of law arise in the present case:-

1. Whether it is permissible for the Court to deny the decree for specific performance by exercising the discretion in absence of substantive reason for denial of the same?
2. Whether the judgments passed by the Courts below are result of misreading of the evidence?
3. Whether it is absolutely necessary to prove the visit to the office of the Sub Registrar by the proposed vendee to prove his readiness and willingness?

Plaintiff had pleaded in the plaint that Smt. Shanti Devi had died issueless, which is an admitted fact. Plaintiff had further pleaded that the defendants, who claimed to be legal heirs of brother of father-in-law have no concern with the land. However, in the alternative, plaintiff did plead that if the defendants are able to establish their right in the property then decree for specific performance be passed.

In my considered opinion and in view of the aforesaid pleadings, the learned Court was in error in denying the relief of specific performance particularly when the agreement to sell on payment of earnest money of ₹90,000/- had been proved. Even delivery of possession to the plaintiff was proved at the time of entering into the agreement to sell. Since Smt. Shanti Devi was issueless, therefore, the plaintiff was justified in pleading that the defendants have no concern with the suit property. However, if the defendants have any concern with the property of Smt. Shanti Devi, then the suit for specific performance be decreed.

Learned Courts have further found that the plaintiff was not always ready and willing to perform his part of the contract. As per agreement to sell, the target date for execution and registration of the sale deed was 10.11.1999. Plaintiff filed a suit on 02.11.1999 i.e. 8 days before the target date. Plaintiff in his plaint did assert that he was always ready and willing to perform his part of the contract. Plaintiff had appeared into the witness-box as PW-4. In examination-in-chief, plaintiff did make a statement that he was ready and willing to perform his part of the contract. No suggestion was given to the plaintiff in the cross-examination that the plaintiff was not ready and willing to perform his part of the contract, therefore, there is lack of cross-examination on this point. Correctness of the statement of plaintiff has not been challenged in cross-examination.

In these circumstances, finding of the Court that the plaintiff has failed to prove his readiness and willingness is found to be erroneous.

Learned counsel for the respondents has argued that the plaintiff did not appear before the office of Sub Registrar. Even the

plaintiff did not issue notice to the defendants, therefore, no finding on the readiness and willingness can be given.

I have considered the submissions of learned counsel for the respondents. The target date for execution and registration of the sale deed was 10.11.1999. Plaintiff would have visited the office of Sub Registrar on 10.11.1999, however, plaintiff filed a suit on 02.11.1999 in view of peculiar facts as the defendants started interfering in the possession of the plaintiff, therefore, the plaintiff was not required to visit the office of Sub Registrar on the target date.

Learned Courts below have further gone against the plaintiff on the ground that no notice was given to the legal heirs before filing a suit in question. In my opinion, even this finding is incorrect once the plaintiff had pleaded that Smt. Shanti Devi had died issueless and defendants have no concern with the property, therefore, there was no necessity of issuing any notice to the defendants before filing the suit. Even otherwise, for filing a suit for specific performance, there is no requirement that a prior notice must be served on the defendants.

It may further be noticed that the defendants have filed Regular Second Appeal No.4260 of 2011 as the Courts below have decreed the suit for permanent injunction in favour of the plaintiff. The aforesaid appeal has already been dismissed by this Court vide judgment dated 04.12.2012.

The judgments and decrees passed by the Courts below denying the relief of the specific performance of agreement to sell are set aside.

Learned counsel for the respondents has further argued that

Smt. Shanti Devi was only the co-owner to the extent of 1/6th share in 6 plots, therefore, she was not entitled to enter into an agreement to sell with regard to a specific plot.

Learned counsel for the appellant has drawn my attention to the statement of DW2-Indraj, who has specifically stated that Shanti Devi was owner of the plot in question. He has stated that the husband of Shanti Devi namely Krishan had constructed a house and Krishan alongwith his wife Shanti Devi used to reside in the aforesaid house. After the death of Krishan, Shanti Devi continued to reside in the aforesaid house.

Still further in a suit for specific performance, the question whether Smt. Shanti Devi was co-owner or exclusive owner, cannot be gone into. Parties would be free to get the aforesaid dispute settled.

In view of the discussion made above, all the three questions of law framed are answered in favour of the appellant and the present Regular Second Appeal is hereby allowed.

07.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No