

213.

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

RSA-3060-2011 (O&M)

Date of decision:17.01.2017

Ved Parkash

... Appellant

versus

Sukhvinder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rakesh Gupta, Advocate,
for the appellant.

Mr.Dalel Singh Nain, Advocate,
for respondents No.1 to 8.

HARI PAL VERMA, J.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 28.04.2011 passed by learned Additional District Judge, Kaithal, whereby his appeal against the judgment and decree dated 03.11.2009 passed by learned Civil Judge (Senior Division), Kaithal was dismissed.

Briefly stated, the plaintiff-Zile Singh filed a suit for possession by way of specific performance of land measuring 150 square yards compromised in Khewat No.67, Khatoni No.90 to 95, Rectangle No.212, Killa No.5/6 out of total land measuring 230 Kanals 5 Marlas situated in Village Fatehpur, Tehsil and District Kaithal, against the defendant on the basis of an agreement to sell dated 03.09.2002 at the rate of ₹550/- per square yard. The defendant received an amount of ₹40,000/- as earnest money. The sale deed was to be executed on or before 25.05.2003, but on

of sale deed beyond one month of lifting the ban on the sale deeds by the Haryana Government, which the Government imposed in August, 2003. Accordingly, the plaintiff went to the defendant to get the sale deed executed and registered on 11.09.2003 and the defendant No.1-Ved Parkash agreed to come present in the office of Joint Sub-Registrar, Fatehpur Pundri on that date, but he did not turn up and the plaintiff got his presence marked in the office of Joint Sub Registrar on 11.09.2003 and 12.09.2003. He was ready on these dates with balance sale consideration and other charges.

The defendant filed reply taking preliminary objections: that the suit has not been filed according to the provisions of Order 7 CPC, the plaintiff has no cause of action against the defendant, the suit is not properly verified, land is joint and without partition and, therefore, specific performance of the agreement cannot be ordered.

From the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the agreement to sell dated 3.9.2002 the defendant agreed to sell the suit property at the rate of Rs.550/- per square yard and received Rs.40,000/- as earnest money? OPP

2. Whether the plaintiff was/is ready and willing to perform his part of contract, if so to what its effect? OPP.

3. Whether the plaintiff is entitled to maintain the present suit? OPP (wrongly typed as OPD).

4. Whether the plaintiff has no cause of action to file the present suit? OPD.

5. Relief.

On 5.6.2007 following additional issue No.1 was framed as under:-

1. Whether the suit land is the Joint Hindu Family Property of the defendant? OPD”

During trial, the plaintiff-Zile Singh died and vide order dated

Similarly, vide order dated 10.01.2007, defendant No.1-Ved Parkash's brothers, namely, Prem Singh and Arjun Singh were also ordered to be impleaded as parties.

The trial Court vide judgment and decree dated 03.11.2009 decreed the suit for possession by way of specific performance of agreement to sell dated 03.09.2002 in favour of plaintiff and against the defendants. The defendants were directed to get the sale deed executed and registered qua suit property in favour of plaintiff on receipt of balance sale consideration of ₹ 32,000/- within one month from the date of the order.

Aggrieved against the said judgment and decree, the defendants filed an appeal which was also dismissed by the Lower Appellate Court vide judgment and decree dated 28.04.2011, observing as under:-

“18. Perusal of file shows that on 20.5.2003, the date of execution and registration of sale deed was extended with the consent of both the parties and time was given for one month on obtaining no objection certificate. Learned counsel for defendants/appellants has placed reliance on Prem Raj and another Versus Smt. Darshasna and others as reported in 2007(1) RCR (Civil) 681 in which it has been observed by our own Hon'ble High Court that if the extension of time has been sought by the purchaser it shows that he was not ready and willing to perform his part of the contract. The ratio in the said authority is not applicable to the facts of the present case as extension of time was not taken by the plaintiff, rather it was jointly decided by both the parties. The appellants/defendants cannot take benefit of the ratio of the said authority. Learned counsel for the appellants/defendants has wrongly interpreted that extension was for thirty days and plaintiff Zile Singh was required to get his presence marked. Mark-B is the application dated 11.09.2003 moved by the plaintiff Zile Singh before Naib Tehsildar Fatehpur-Pundri for getting his presence marked and Mark-A is the application dated 12.09.2003 for getting his presence marked. Mark-C is affidavit executed by defendant Ved Parkash. It cannot be said that the plaintiff Zile Singh was not ready and willing to perform his part of contract on 25.5.2003 or on 26.5.2003. Though it has also been argued by learned counsel for appellants/defendants that during

proceedings before the learned trial Court, plaintiff Zile Singh had died and later on his legal heirs were impleaded. Legal representatives of Zile Singh were also required to lead evidence as to whether they were ready and willing to perform their part of contract. No such evidence has been led.”

Learned counsel for the appellant has argued that readiness and willingness on the part of the respondent-plaintiff has not been proved and the appellant was not properly intimated regarding the lifting of ban in the year 2003. He further states that the marked documents i.e. affidavit dated 11.09.2003 and additional affidavit dated 12.09.2003 cannot be read into evidence as the same have not been exhibited.

The appellant has preferred the present appeal on the following substantial questions of law:-

“(a) Whether from the admitted pleadings of the parties it can be presumed that the plaintiff/respondent had the requisite money to successfully seek specific performance on 11.9.2003 or 12.9.2003?

(b) Whether the courts below have misinterpreted the basic agreement to sell in as much as even the consideration which was payable in the agreement set up by the plaintiff is shown to be incorrect both in the pleadings as well as in the evidence?

(3) Whether the courts below can order the specific performance of an agreement to sell for a consideration of Rs.72000/- whereas the consideration as per the agreement to sell is Rs.82,500/-?

(d) Whether the courts below can order specific performance of a specific plot, whereas, the entire land is 230 kanals and 5 marlas unpartitioned agriculture land?

(e) Whether a vendee can be put in possession of a specific portion of a land, when the vendor is only a co-sharer in a bigger piece of land?

(f) Whether an agreement which is scribed on a plain paper with a stamp affixed on it can be legally called an agreement to sell under the Indian Stamp Act?

(g) Whether the courts below have completely misread the evidence on the file to return a perverse finding of facts?”

Learned counsel for the appellant has further argued that it is a

himself did not have any specific share or specific possession. Once appellant himself did not have any specific share or specific possession, no agreement could either be executed or specifically enforced. The agreement is only on plain paper which is not admissible under the Stamp Rules and as per Indian Stamp Act, an agreement to sell is duly required to be on a stamp paper.

I have heard learned counsel for the parties.

The suit land is 150 square yards which is a part of total land measuring 230 kanals and 5 marlas. As per agreement to sell dated 03.09.2002, the sale deed was required to be executed on 25.05.2003 and the respondent-plaintiff has succeeded in proving the due execution of the agreement to sell and he was ready and willing to perform his part of the agreement. The defendant had received ₹40,000/- as earnest money for which defendant executed receipt Ex.P2. From Mark A, B and C, it is revealed that the plaintiff was ready and willing to perform his part of contract and that is the reason, he was present before the Joint Sub-Registrar, Fatehpur Pundri with balance sale consideration and other charges etc., but the appellant-defendant did not turn up to perform his part of the agreement. So far as the finding that the suit land was Joint Hindu Family property of the appellant-defendant is concerned, since no evidence was led by the appellant-defendant in that regard, this issue was decided in favour of respondent-plaintiff. Once the plaintiff had succeeded in proving the agreement and had appeared before the Joint Sub-Registrar, Fatehpur Pundri, it fully satisfies the test that the respondent-plaintiff was ready and willing to get the sale deed executed.

Thus, no substantial question of law arises in the present regular second appeal and the same is, accordingly, dismissed.

CM-8385-C-2011

Prayer in the application filed under Order 41 Rule 5 read with Section 151 CPC is for staying the operation of impugned orders.

Since the main appeal has been dismissed by this Court, the application has become infructuous and is dismissed as such.

(HARI PAL VERMA)
JUDGE

17.01.2017
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No