

RSA No. 1979 of 2016 (O&M)

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

RSA No. 1979 of 2016 (O&M)

Date of Decision: 19.7.2017

Kamal Singh

.....Appellant

Vs.

Anil (since deceased) through his LRs

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajat Gautam, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 5262-C-2016

Applicant seeks condonation of delay of 23 days in re-filing the appeal.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 23 days in re-filing the appeal is condoned.

CM stands disposed of.

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Instant regular second appeal, at the hands of defendants, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance of the agreement to sell dated 9.10.2006 filed by the plaintiff-respondent was

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decreed by the learned trial court, vide its impugned judgment and decree dated 9.5.2012 and first appeal of defendant-appellant was dismissed by the Additional District Judge, vide his impugned judgment and decree dated 21.4.2015.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that respondent-plaintiff Anil filed a suit for specific performance of agreement dated 09.10.2006 of land measuring 12 Kanals in Killa Nos.6//6(2-7) 7(5-11) 14(7-8) of 0 Kanal 12 Marlas in the North and 15/1(3-10) adjacent North road, 124 Kanals 3 Marlas of Khewat No.1/1 Khatoni No.1 to 4 as per jamabandi for the year 2003-2004 situated in the revenue estate of village Samaspur, Tehsil Charkhi Dadri, on the ground that the appellant-defendant was owner of 20 Kanals 15 Marlas of land i.e. 415/2489 share in the total land of 124 Kanals 3 Marlas in the partition. The appellant-defendant got the share of 12 Kanals of land which is the suit land and he agreed to sell the same to the respondent-plaintiff for a consideration of ₹15,30,000/- vide agreement to sell dated 09.10.2006. At the time of agreement to sell, ₹3,00,000/- were given in cash and the remaining amount of ₹12,30,000/- was to be given at the time of execution of agreement to sell in the name of the respondent-plaintiff or any other name which the respondent-plaintiff wishes. The date for execution of the sale was fixed for 30.04.2007 and it was agreed that if on 30.04.2007, appellant-defendant was not ready to perform his part of contract, the respondent-plaintiff could get the same executed through Court of law and if the respondent-plaintiff failed to perform his part of contract, the amount of ₹3 lacs would be forfeited. Both the parties were bound by the terms and conditions of the agreement to sell. The parties along with their

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witnesses were read over the contents of the agreement to sell and they all put their signatures and thumb impressions after understanding its contents. The agreement to sell was entered in the register of Notary Public Jagdev Singh at Sr. No.3204 dated 09.10.2006 and the appellant-defendant had also put his signatures on the same.

It was averred that the respondent-plaintiff came to know that the appellant-defendant was planning to alienate the suit land and he had no intention to get the agreement to sell dated 09.10.2006 executed, hence, he gave a notice through his counsel for getting the agreement to sell execute on 30.04.2007 and he also mentioned in the same that if some other date would be fixed, the respondent-plaintiff would be ready to perform his part of contract on two days' notice.

On 30.04.2007 as per terms and condition of the agreement to sell, respondent-plaintiff went to the appellant-defendant and requested him to go to the office of Sub Registrar, Dadri, and the respondent-plaintiff visited the office of Sub Registrar on the date fixed and waited from 9.00 A.M. till 5.00 P.M., but the appellant-defendant did not turn up. He got his affidavit attested and also sent a legal notice through his counsel on 08.05.2007, stating therein that he was ready and willing to perform his part of contract dated 09.10.2006 and was still ready and willing to perform his part of contract. He also requested the appellant-defendant to clear the bank loan and to execute the agreement to sell within 10 days, but the appellant-defendant took no action and he is not ready and willing to perform his part of contract. He prayed that agreement to sell dated 09.10.2006 be got executed and he be restrained from alienating the suit land in any manner.

Defendant was put to notice. He appeared and filed his written

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statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to decree for possession of the suit property by way of specific performance in terms of agreement to sell dated 09.10.2006, as prayed for ?OPP
2. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit?OPD
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has not affixed the ad-valorem Court fee on the plaint as alleged?OPD
5. Relief

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, his suit for possession by way of specific performance of the agreement to sell was decreed by the learned trial court, vide its impugned judgment and decree dated 9.5.2012. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 21.4.2015. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments passed by the learned courts below will make it crystal clear that defendant-

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appellant miserably failed to prove his pleaded case. On the other hand, plaintiff-respondent duly proved the agreement to sell in question. He also proved his readiness and willingness to perform his part of the contract. It was the argued case on behalf of the appellant that respondent-plaintiff was not ready and willing to perform his part of contract on the target date, i.e. 30.4.2017. However, defendant failed to substantiate this stand taken by him in his pleadings. Once the plaintiff has duly proved the execution of the agreement to sell and also his readiness and willingness at the relevant point of time, his suit was rightly decreed by both the learned courts below and impugned judgments and decrees deserve to be upheld.

The argument raised by the learned counsel for the appellant, while placing reliance on the judgment of the Hon'ble Supreme Court in **Sita Ram and others Vs. Radhey Shyam, 2007 (14) SCC 415**, that plaintiff failed to prove his readiness and willing to perform his part of contract, has been duly considered by this Court but found wholly misplaced. It is so said, because the plaintiff has duly proved his readiness and willingness by producing his legal notices Ex. PW6/A and Ex.PW3/A, coupled with the fact that he was present in the office of Sub-Registrar on the target date, i.e. 30.4.2007.

Plaintiff also examined Surender Singh, Lambardar, as PW4, who deposed that plaintiff was present in the office of Sub-Registrar on the target date. No contrary or better evidence was produced by the defendant-appellant, which may even remotely suggest that evidence led by the plaintiff was not plausible. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve

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to be upheld, for this reason also

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“After hearing the learned counsel for the parties and after going through the case file carefully, it is observed that there is no dispute with regard to the execution of the agreement to sell dated 09.10.2006 of the land in dispute. The respondent-plaintiff in order to prove his case has examined the Deed Writer, the person from whom the stamp papers were purchased and the witnesses and he has served the appellant-defendant with notice which proved that appellant-defendant was not ready and willing to perform his part of contract and the appellant-defendant had only placed on record document that he has filed reply to the notice of the respondent-plaintiff but he never proved the same as required under the law. In view of these observations, there is no illegality in findings of the learned trial Court, hence, no interference is required on findings of issue No.1.”

It was also not pleaded or argued the case on behalf of the appellant that instant one is a case of hardship against the appellant. Suit land was not the only land owned by the defendant-appellant. He also failed to produce any witness or evidence to show that agreement to sell in question was not a genuine document, which has been duly proved on record. Further, readiness and willingness of the plaintiff has also been

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established on record, by leading cogent and convincing evidence referred to hereinabove.

The contention raised by learned counsel for the appellant that plaintiff was not carrying with him a bank statement or bank draft showing the availability of requisite amount, has also been duly considered but the same has not been found worth acceptance, for the reason that, it was not the requirement of law that plaintiff shall keep on carrying with him either a copy of bank statement or bank draft. Once the independent witnesses have duly proved the readiness and willingness of the plaintiff and his presence in the office of Sub-Registrar on the target date, he has duly proved his readiness and willingness to perform his part of contract.

Under these peculiar facts and circumstances of the case, it can be safely concluded that no reason has been pointed out or found in the case in hand to deny the relief of specific performance to the plaintiff-respondent and the same has been rightly granted by the learned courts below, while passing the impugned judgments and decrees which deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and

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Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

19.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No