

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2752 of 2015 (O&M)

Date of decision: 19.01.2017

Santokh Singh

... Appellant

Vs.

Deepak Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Jatin Salwan, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 17.10.2014 passed by Additional District Judge, Amritsar, whereby first appeal of the defendant-appellant was dismissed, upholding the impugned judgment and decree dated 03.03.2012 passed by learned trial Court, decreeing the suit for possession by way of specific performance filed by the plaintiff-respondent, defendant has approached this Court by way of instant Regular Second Appeal.

Brief facts of the case, as recorded by learned First Appellate Court in para 4 of its impugned judgment, are that respondent/plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 05.04.2004 and permanent injunction for restraining the defendant from alienating the suit property bearing old No.1621/9 and new Municipal No.2326/13, measuring 27' x 9 ' in all 27 sq. yards, as detailed in the head note of the plaint, on the ground that defendant being in possession of a double

storey building bearing old No.1621/9 and new Municipal No.2326/13, measuring 27 sq. yards situated at inside Gate Hakiman Wala, Amritsar vide sale deed dated 05.05.2000 had agreed to sell the said property in favour of the plaintiff vide agreement to sell dated 05.04.2004 for consideration of Rs.8,15,000/- by receiving a sum of Rs.1.00 lac as an earnest money from the plaintiff and agreed to execute registered sale deed on 05.07.2004 on receipt of balance sale consideration. On 05.07.2004 there was a strike and the plaintiff had gone to the office of Sub Registrar, Amritsar along with the balance sale consideration after intimating the defendant about the place of meeting for scribing the sale deed at the chamber of deed writer on 06.07.2004, but defendant did not come present there for execution and registration of the sale deed and plaintiff waited for defendant from 9.00 AM to 5.00 PM and thereafter he got his presence marked at the office of Sub Registrar, Amritsar by submitting an application supported by an affidavit. Thereafter, plaintiff approached the defendant and requested him to execute the sale deed in terms of the agreement and on 22.07.2004, defendant finally refused to execute the sale deed in favour of the plaintiff. Thereafter, plaintiff served a legal notice upon defendant on 22.07.2004 and in spite of the notice, defendant refused to execute the sale deed and threatened to alienate the suit property to some other person.

Having been put to notice, defendant-appellant appeared and filed his written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether defendant executed an agreement to sell dated

05.04.2004 in respect of the suit property in favour of the plaintiff? OPP

2. Whether plaintiff had always been ready and willing, remaining ready and willing and is still ready and willing to perform part of the agreement? OPP
3. Whether plaintiff is entitled to specific performance of agreement to sell dated 05.04.2004 by way of delivery of possession? OPP
- 3-A. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
4. Whether the present suit is not maintainable? OPD
4. Whether plaintiff has no locus standi to file the present suit? OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
6. Whether suit is barred under Section 41(h) of Specific Relief Act? OPD
7. Relief

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved his case. Accordingly, suit for possession by way of specific performance on the basis of agreement to sell dated 05.04.2004, was decreed vide judgment and decree dated 03.03.2012. Defendant filed his first appeal, which also came to be

dismissed by the learned First Appellate Court vide impugned judgment and decree dated 17.10.2014. Hence this second appeal at the hands of the defendant.

Heard learned counsel for the appellant.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the cogent and concurrent findings of facts recorded by the learned Courts below, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In fact, agreement to sell Ex.P1 has been duly proved. Receipt of earnest money by the appellant was also duly proved on record. Thereafter, plaintiff-respondent also proved that he remained ready and willing to perform his part of the contract. Plaintiff-respondent discharged his onus qua material issues No.1 to 3 as well as issue No.3A by bringing on record the cogent evidence. Having said that, this Court feels no hesitation to conclude that learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The facts as well as evidence available on record were re-appreciated by the learned First Appellate Court, before recording its own cogent findings in support of its just conclusion. Once the agreement to sell Ex.P1 was found to be a genuine one and the plaintiff took appropriate averments, which were duly proved on record by leading cogent evidence, his suit was rightly decreed by the learned trial Court. Further, defendant-appellant failed to substantiate any of his contentions raised before the learned Courts below. Consequently, both the learned Courts below recorded their concurrent

findings of fact, which do not call for any interference at the hands of this Court in exercise of its appellate jurisdiction.

A bare reading of both the impugned judgments would make it crystal clear that pleadings of the parties as well as the evidence was correctly appreciated by the learned Courts below. No question of law, much less substantial questions of law, arises in the present case for consideration of this Court, which is sine qua non for entertaining the Regular Second Appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 CPC. In this regard, reliance can be placed on a judgment of the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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. Pending application(s), if any, shall also be disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

19.01.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No