

RSA No.4253 of 2016 (O&M)

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

**RSA No.4253 of 2016 (O&M)
Date of Decision: 2.2.2017**

G.P.Forest Development (India) Limited

.....Appellant

Vs.

Jarnail Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Girish Agnihotri, Sr. Advocate with
Mr. Kshitij Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in second appeal against concurrent findings of facts recorded by learned courts below, dismissing the suit for possession by way of specific performance of agreement of sell dated 2.1.1995.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that plaintiff-appellant entered into an agreement dated 2.1.1995 for sale of suit land measuring 15K-07M. Possession of the suit land was delivered to the plaintiff-appellant. Defendants-respondents agreed to sell the suit land to plaintiff-appellant @ Rs. 31,000/- per acre (8 Kanals). Total sale consideration of the land was Rs. 59,480/-. The defendants/respondents received a sum of Rs. 8,000/-, as earnest money at the time of execution of agreement between the parties.

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The last date fixed for execution and registration of sale deed was 15.6.1995. Defendants-respondents received a sum of Rs. 7500/-, for the purpose of purchasing stamp papers for the execution and registration of sale deed on 15.6.1995. The sale deed was to be executed on 16.6.1995 as 15.6.1995 was not the date fixed for registration of sale deed in the office of Sub Registrar, Raipur Rani. On 16.6.1995 defendants-respondents did not come to the office of Sub Registrar, Raipur, Rani for execution and registration of sale deed and to perform his part of agreement date 2.1.1995. It was averred that plaintiff/appellant had been ready ready and willing to perform their part of contract but defendants-respondents had dishonestly gone back to execute the sale deed, as the prices of land in the vicinity were increasing. Plaintiff-appellant served defendants-respondents with legal notice. It was further averred that plaintiff-appellant had made a huge investment after taking possession of suit land on 2.1.1995 by planting poplar trees and by installing a tubewell and other development made over the suit land after payment of earnest money. The land was in the name of Sawan Singh son of Beer Singh but the defendants-respondents assured that the land had been transferred in the name of his brother Mohinder Singh and Nirmal Singh vide mutation No. 4165 and the agreement was executed between the parties on the assurance of defendants/respondents regarding transfer of the land in his favour as well as in favour of his brothers. Defendants-respondents had not executed and registered sale deed in favour of the plaintiff-appellant in spite of repeated demands and requests and refused to perform his part of contract.

Having been served in the suit filed by the plaintiff, defendants appeared and filed their contesting written statement, raising more than one

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preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of parties, learned trial court framed the following issues.

- “1. Whether plaintiff is in possession of the land as mentioned in the heading of the plaint?OPP
2. Whether a sum of Rs. 75,00/- was given by the plaintiff to defendant on 15.6.1995 for purchase of stamp papers for execution and registration of sale deed?OPP
3. Whether plaintiff is ready and willing to perform his part of the bargain in the agreement to sell?OPP
4. Whether the plaintiff has made a huge instalment in the suit land?OPP
5. Whether the defendant appeared before the Sub Registrar, Raipur Rani on 15.6.1995 to perform his part of the contract?OPD.
6. Whether the plaintiff is estopped from filing the suit on his act and conduct?OPD
7. Whether the defendant is entitled to special cost under Section 35-A of the CPC?OPD.
8. Whether suit of the plaintiff is bad for misjoinder of parties?OPD
9. Whether suit of the plaintiff is not maintainable in the present from?OPD.
- 10.Relief

It is pertinent to mention here that vide order dated 31.8.1999, one additional issue was framed:-

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1. Whether the suit is barred under order 2 Rule 2
CPC/OPD.

2. Relief.”

In order to prove 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 failed to prove its case. Accordingly, the suit was dismissed vide impugned judgment and decree dated 14.7.2015. Feeling aggrieved, plaintiff filed its first appeal which also came to be dismissed by learned first appellate court vide impugned judgment and decree dated 30.11.2015. Hence this regular second appeal at the hands of the plaintiff.

Heard learned senior counsel for the appellant.

Facts are hardly in dispute. Agreement to sell dated 2.1.1995 was executed between the parties. Target date for execution and registration of the sale deed was 15.6.1995. However, even after expiry of the target date for execution and registration of the sale deed, plaintiff filed simplicitor suit for injunction, vide civil suit No. 290/1996 against the defendants-respondents. At a later point of time, present suit for possession by way of specific performance of agreement to sell dated 2.1.1995 was filed on the same facts and cause of action, i.e. alleged non performance of agreement to sell dated 2.1.1995. This was the reason that defendants rightly raised the objection in this regard. Accordingly, an additional issue was framed as to whether the suit was barred under Order 2 Rule 2 of the Code of Civil Procedure (‘CPC’ for short). Both the learned courts below have rightly held that suit of the plaintiff was clearly barred under Order 2 Rule 2 CPC.

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In fact, there was no explanation forthcoming on behalf of the appellant, as to whether the suit for possession by way of specific performance of agreement to sell dated 2.1.1995 could not be filed at the first instance when a simple suit for injunction was filed, in spite of the fact that, facts and cause of action for filing these suits were one and the same, i.e. alleged non performance of agreement to sell dated 2.1.1995.

During the course of hearing, when confronted with the abovesaid factual as well as legal aspect of the matter, learned senior counsel for the appellant had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees, holding that suit of the plaintiff-appellant was barred under Order 2 Rule 2 CPC.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **S. Nazeer Ahmed Vs. State Bank of Mysore and others, 2007 (11) SCC 75, Alka Gupta Vs. Narender Kumar Gupta, 2011 AIR (SC) 9 and Coffee Board Vs. M/s Ramesh Exports Pvt. Ltd, 2014 (6) SCC 424.**

The second equally important aspect of the matter, is that whether the plaintiff was ready and willing to perform its part of the contract. As noticed hereinabove, target date for execution and registration of the sale deed was 15.6.1995. Although plaintiff claimed to have appeared before the Sub-Registrar on 16.6.1995 instead of 15.6.1995, yet plaintiff miserably failed to prove either readiness and willingness or presence before Sub Registrar on 15.6.1995 or on 16.5.1995. On the other hand, defendants have duly proved their presence before Sub Registrar on 15.6.1995, by

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application Ex.D1 and affidavit Ex.D2. Learned senior counsel for the plaintiff also could not refer to any legal notice which might have been served on the defendants, seeking execution and registration of the sale deed before filing the civil suit, so as to show readiness and willingness. Further, plaintiff-appellant did not disclose about its earlier suit for permanent injunction, while filing the present suit for possession by way of specific performance, in spite of the fact that both the suits were based on the same facts and cause of action.

In this regard, when learned senior counsel for the appellant was asked to refer to any material available on record to show readiness and willingness of the plaintiff, he failed to do so, despite making his best efforts, because there was no such material available on record. In this view of the matter, it can be safely concluded that plaintiff was rightly not held entitled for the relief of specific performance, in view of the provisions of law contained in Sections 16 and 20 of the Specific Relief Act, 1963. It is so said, because readiness and willingness of the plaintiff is a condition precedent to grant relief of specific performance. On this aspect of the matter, reliance can be placed on the judgments of the Hon'ble Supreme Court in **N.P.Thirugnanam (Dead) by Lrs Vs. Dr. R. Jagan Mohan Rao, 1995 (5) SCC 115; Golap Chand Agarwalla G.K.Agarwalla Vs. Gopal Chandra Pal, 2002 (1) JT 406; Man Kaur (dead) by Lrs Vs. Hartar Singh Sangha, 2010 (10) SCC 512; I.S.Sikander (d) By Lrs. Vs. K. Subramani and others, 2013 (15) SCC 27 and K. Parkash Vs. B.R.Sampath Kumar, 2015 (1) SCC 597.**

Learned first appellate court re-considered and re-appreciated the facts and evidence available on record, before recording its own cogent

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findings. Relevant findings recorded by learned first appellate court in para 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

Having due regards to the contentions raised by the learned counsel for the parties, in the present case, it is admitted position that parties to the suit entered into an agreement to sell dated 02.01.1995 Ex.P1. Though, agreement to sell dated 02.01.1995 bears the signatures of respondent no. 1 only, however, respondents no.2 and 3 have not disputes that the agreement was not executed on their behalf. They have not filed any separate written statement and have adopted the stand taken by respondent no.1. Meaning thereby, they have also admitted document i.e. agreement to sell dated 02.01.1995 Ex.P1. It is well settled that for a suit for specific performance of agreement to sell, three conditions are required to prove namely (i) validly executed agreement to sell; (ii) passing of consideration pursuant to such agreement should be conclusively established and (iii) willingness and readiness of the vendee to perform his part of contract should also be established.

In the present case, the execution of the agreement to sell Ex.P 1 is not disputed. The plea taken by the appellant that he had appeared on 16.06.1995 instead of 15.06.1995 before Sub Registrar, Raipurani cannot be accepted as in this regard, no document with regards to his appearance before Sub Registrar, Raipurani has been placed on record, whereas on the other hand, respondents have placed on record EX.D1 and EX.D2 i.e. the application and affidavit regarding their presence before Sub Registrar, Raipurani. Moreover, the appellant has also not placed on record any documentary evidence that

it was having sufficient amount in its account for making payment of remaining sale consideration. Similarly, there is bald statement with regards to making payment of Rs.7,500/- for purchasing stamp papers etc. but no receipt or document in this behalf has been placed on record by the appellant-plaintiff. Further more, no legal notice before filing the present suit was given. Therefore, there is no sufficient evidence on behalf of appellant-plaintiff to prove his readiness and willingness to get a decree for specific performance in his favour. Further more, it is also well settled that readiness and willingness should not be confined to a particular period and the same should be continuous from the date fixed for execution of sale deed till filing of the suit. A reference in this regard may be made to the case titled as LS.Sikandar represented through L.Rs Vs. K. Subramani and others, 2013(1) Law Herald SC 587 and N.P.Thirugnanam Vs. Dr. R. Iyengar Mohan Rao & Ors., 1996(1) CCC 27 (SC) as well as K. Parkash Vs. B.R.Sampath Kumar (Supra). Thus, it has been rightly observed by the learned trial court that the appellant-plaintiff has failed to prove his continuous readiness and willingness to perform his part of contract to sell.

As far as the findings of learned trial court on additional issue no.1A and 9 are concerned, same are perfectly legal and right because it is well settled that a plaintiff is bound to claim all the reliefs in one suit and not by way of different suits. In the present case, admittedly, earlier a suit seeking permanent injunction was filed on 06.04.1996 which was later on got dismissed in default on 18.07.1996 and later on present suit was filed on 16.04.1996 seeking relief of specific performance despite the fact that the date of execution of sale deed was 15.06.1995 and therefore, the appellant-

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plaintiff was having cause of action for filing the suit for specific performance on 15.06.1995. Thus, the finding given by learned trial court that the suit filed by the appellant-plaintiff was barred under the provisions of Order 2 Rule 2 CPC is perfectly right because the appellant could have claimed both reliefs in single suit once cause of action had already accrued to the appellant after the date fixed. Position would have been different if injunction suit would have been filed before the date fixed for execution of sale deed. However, in the present case, since the appellant did not choose to file suit for specific performance and simply filed the simplicitor suit for injunction, it implies that he had waived off his rights to file a suit for specific performance subsequently. There is no explanation given by the appellant to justify his act for filing a separate suit for specific performance later on. Mere filing a suit within a period of limitation is no ground to justify the act of appellant for filing a separate suit at a later stage when he had already filed simplicitor suit for injunction. Thus, it is held that suit of the appellant-plaintiff is barred under Order 2 Rule 2 CPC.”

A combined reading of both the impugned judgments and decrees would show that learned courts below committed no error of law, while passing the impugned judgments, which have been found based on sound reasons. Each and every relevant aspect of the matter has been considered in detail. Under the peculiar facts and circumstances of the case noted hereinabove, it is held that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Finally, no question of law much less substantial question of law has been pointed out by learned senior counsel for the appellant, nor any

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substantial question of law has been found involved in the present appeal, 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **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.

(RAMESHWAR SINGH MALIK)
JUDGE

2.2.2017
Ak Sharma

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