

RSA No. 3098 of 2015 (O&M)

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

**RSA No. 3098 of 2015 (O&M)
Date of Decision: 21.8.2017**

Chander Dev Singh and another

.....Appellants

Vs.

Balak Ram and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Vishal Munjal, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit of the plaintiffs-respondents for specific performance of the agreement to sell dated 11.1.2006, was decreed.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that Chander Dev Singh-appellant/defendant No.1 was general power of attorney of defendant No.2 vide document No.5 dated 15.6.2005. The appellants-defendants being owner of the land to the extent of 20 kanals out of the land measuring 40 kanals, agreed to sell the same to the plaintiffs for the consideration of ₹2,10,000/- vide agreement dated 11.1.2006. At that time, the appellants/defendants received ₹50,000/- as earnest money. It was averred that the appellants/defendants undertook to get the sale deed executed on or

RSA No. 3098 of 2015 (O&M)

before 30.5.2006. The respondent/plaintiff approached the appellants/defendants number of times with request to perform their part of the contract. Even the respondent/plaintiff remained present before the office of Sub Registrar, Pathankot on 24.5.2006 and 31.5.2006 along with balance sale consideration, but the appellants/defendants failed to turn up. It was further averred that the respondents/plaintiffs were ready and willing to perform their part of contract. The appellants/defendants failed to perform their part of the contract.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1) Whether plaintiff is entitled for decree of specific performance of the agreement dated 11.1.2006 as prayed for?OPP
- 2) Whether the plaintiff is entitled to decree of permanent injunction or in the alternative, recovery of ₹50,000/- as prayed for ? OPP
- 3) Whether suit of the plaintiff is not maintainable ? OPD
- 4) Whether the plaintiff has suppressed the material facts from the court.
- 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 plaintiffs have duly proved their case. Accordingly, their suit for possession by way of specific performance of the agreement to sell was

RSA No. 3098 of 2015 (O&M)

decreed by the learned trial court, vide its impugned judgment and decree dated 3.9.2011. Feeling aggrieved, defendants filed their first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 5.3.2015. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

Ownership of the defendants-appellants on the suit property was not in dispute. Execution of the agreement to sell dated 11.1.2006 and receipt of earnest money by the appellants was also not in dispute. Initially, defendant-appellant No.1 tried to deny his signatures on the agreement in his cross-examination but later on, he had to admit his signatures on the agreement to sell (Ex.P1). Plaintiffs-respondents also proved their readiness and willingness to perform their part of the contract. It were the defendants-appellants who were not coming forward to execute the sale deed in compliance of the agreement to sell (Ex.P-1).

Pursuant to the agreement to sell between the parties vide Ex. P1, defendants-appellants also admitted that they had put the plaintiffs in actual physical possession over the suit property. Plaintiffs duly proved on record their affidavits dated 24.5.2006 (Ex.P2) and 30.5.2006 (Ex.P3) to establish that they were always ready and willing to perform their part of the contract. There were cogent and sufficient evidence available on record produced by the plaintiffs, which clearly proved their pleaded case. 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 to be upheld.

Once the agreement to sell (Ex.P1) was duly proved, followed

RSA No. 3098 of 2015 (O&M)

by payment of earnest money by the plaintiffs to the defendants-appellants, which was also not in dispute, coupled with the fact that plaintiffs duly proved their readiness and willingness to perform their part of the contract, plaintiffs were rightly held entitled for the primary relief of specific performance by both the learned courts below. Handing over possession of the suit land by the defendants-appellants to the plaintiffs-respondents after execution of the agreement to sell (Ex.P1) has also gone undisputed on record. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned 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 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“ It is admitted fact that the defendants are owners of the property. Agreement to sell has been proved by the plaintiff by examining Subhash Chander as PW-3, who is scribe of the agreement. PW-3 has specifically deposed that he scribed the agreement at the instance of defendants in favour of the plaintiffs. Agreement Ex.P1 was read over to the parties, who have admitted it as correct and signed the same in the presence of the witnesses. The witnesses also signed the agreement. The plaintiffs have examined PW-1 Balbir Singh who is attesting

witness of the agreement and deposed that the agreement was scribed at the instance of the defendants in favour of the plaintiffs. He further deposed that at the time of execution, defendants received Rs. 50,000/- as earnest money from the plaintiff. Tilak Raj has been examined as PW-4, who proved power of attorney as Ex.P4 showing that Chander Dev Singh has been appointed as power of attorney of defendant No.2 Rajni. Plaintiff Balak Ram appeared as PW-2 who deposed in terms of his plaint.

Though the defendant Chander Dev Singh when appeared as DW-1 denied the execution of the agreement and receipt of sale consideration, but in his cross examination he has deposed that the signatures on the agreement Ex.P1 resembles with the signatures. He further deposed that he put the signatures in Hindi and English as per his need. In the cross-examination, he admitted that the plaintiffs are in possession of the suit property. He further deposed that he has been ready and willing to execute the sale deed as per agreement but the plaintiffs have not come present before the office of Sub-Registrar for getting the sale deed executed. From this fact that the defendant himself state that he remained ready and willing to execute the sale deed, proves that agreement to sell Ex.P1 was executed between the parties. This admission of defendant No.1 Chander Dev Singh on his behalf and being the power of attorney of defendant No.2 entered into the agreement to sell the suit property to the plaintiff for Rs.

RSA No. 3098 of 2015 (O&M)

2,10,000/- and received Rs. 50,000/- as earnest money in the presence of the witnesses at the time of execution of agreement Ex.P1. Plaintiff Balak Ram has specifically deposed that he has been ready and willing to perform his part of the contract. As per Ex. P1 Sale deed was to be executed on or before 30.5.2006. The plaintiffs have placed and proved on file affidavits dt. 24.5.06 Ex.P2 and affidavit dt. 30.5.2006 as Ex.P3 to prove that he is ready and willing to perform his part of the contract. When the defendants have specifically denied regarding the execution of agreement Ex.P1 in the written statement as well as in the examination-in-chief. On the other hand, there is oral evidence of Balak Ram, coupled with the documentary evidence in the shape of affidavits Ex.P2 and Ex.P3 proved that he plaintiffs have been ready and willing to perform his part of the contract. Hence, in the totality of facts and circumstances of the case, the trial court has rightly decreed the suit of the plaintiffs.”

During the course of hearing, learned counsel for the appellants 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**

RSA No. 3098 of 2015 (O&M)

**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.

21.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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