

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

**RSA No. 5564 of 2016 (O&M)
Date of Decision: 17.03.2017**

Jaspreet Singh

... Appellant

vs.

Ravinder Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Arjunveer Sharma, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

The plaintiff has filed the instant regular second appeal against the judgments and decrees rendered by the Courts below. The trial Court dismissed the suit for specific performance. The appellate Court partly allowed the appeal of the plaintiff and directed the defendant to return the earnest money of Rs.50,000/- with pendente lite and future interest.

The suit was filed seeking specific performance of agreement to sell dated 12.09.2006. It was claimed that the defendant executed the agreement to sell land measuring 2 kanal 4 marlas for Rs. 6,87,500/- and had received the earnest money of Rs.50,000/-. The date for registration of sale deed was 12.01.2007, but the defendant refused to execute the sale-deed despite notice dated 11.09.2009.

The defendant denied the execution of the agreement. It was averred that the parties were having strained relations and civil as

well as criminal proceedings were going on. It was claimed that the property was under attachment with the Cooperative Society and there was no question of entering into any agreement. It was further averred that the plaintiff failed to prove his readiness and willingness to perform his part of the contract.

On the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff entered into agreement to sell the land with the defendant on 12.09.2006?OPP*
- 2. Whether the plaintiff always ready and willing to perform the part of agreement dated 12.09.2006?OPP*
- 3. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 12.09.2006?OPP*
- 4. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 6. Whether the plaintiff has no locus standi to file the suit?OPD*
- 7. Whether suit of the plaintiff is barred under Section 16 of the Specific Relief Act?OPD*
- 8. Relief.”*

Evidence was led by both the parties.

On appraisal of the evidence, including that of marginal witness, the trial Court came to the conclusion that the plaintiff had proved the execution of the agreement to sell by the defendant.

Coming to the aspect of readiness and willingness, it was held that the date of execution of sale-deed was 12.01.2007 and the plaintiff kept quiet for a considerable time i.e. 11.09.2009 and the legal notice was issued requiring the defendant to appear before the Sub Registrar on 25.09.2009. It could not be shown that the plaintiff had the balance amount with him in 2007. Since the readiness and willingness could not be proved, it was held that he was not entitled to the decree of specific performance.

The appellate Court granted the alternative relief of recovery of earnest money along with pendente lite and future interest. Still dis-satisfied, the plaintiff has filed the instant regular second appeal.

I have heard learned counsel for the appellant and have perused the paper-book carefully.

Learned counsel for the appellant had urged that the Courts below had erred in holding that the plaintiff was not ready and willing to complete the transaction. According to him, once the execution of agreement was proved, the Courts ought to have granted the relief of specific performance to the plaintiff especially when the plaintiff appeared before the Sub Registrar and got marked his presence and filed the suit within limitation and there was no need to prove that he had the cash with him. Reliance had been placed upon **Rattan Lal (since deceased) through his LR Vs. S.N. Bhalla & Ors., 2012(4) RCR(Civil) 283, Sukhbir Singh & Ors. Vs. Brij Pal Singh & Ors. 1996 AIR(SC) 2510, Iqbal Singh & Anr. Vs. Gurdev**

Kumar & Anr., 2004(4) RCR(Civil) 103 and Jora Singh Vs. Lakhwinder Kumar & Ors. 2011(1) RCR(Civil) 130. He has further urged that once the defendant had denied the execution of the agreement, the plea about the readiness and willingness was not available to him. He had referred to **Lal Chand Vs. Tek Chand 2013 (5) RCR(Civil) 104.**

Both the Courts below had concurrently held that the agreement had been executed. Though, fraud was pleaded by the defendant, but no evidence could be led to substantiate the plea. The defendant did not challenge the finding of trial Court to the effect that the agreement had been executed. There is no reason to take a different view. It was plaintiff's own case that the date for execution and registration of sale-deed was 12.01.2007. PW2 Sukhdev Singh, the marginal witness had admitted in his cross-examination that on 13.01.2007 the defendant was asked to execute the sale-deed, but he refused to do so. The plaintiff failed to show that he had appeared before the Sub Registrar on 12.01.2007. No evidence was produced to substantiate the plea that the date for execution of sale-deed was extended. Nothing had been produced on record to show the steps taken by the plaintiff to get the sale-deed executed. After a lapse of more than two years and eight months, the plaintiff sent the notice on 11.09.2009. Though, the suit was filed within limitation, but silence and inaction during interregnum itself established the fact that there was no readiness and willingness on his part and the appellate Court rightly held him entitled only to the alternative relief of recovery of

the earnest money.

The facts of S.N. Bhalla's case supra were entirely different. No steps were taken by the plaintiff for two and half year.

Similarly, in the cases of Sukhbir Singh, Iqbal Singh and Jora Singh(supra), the purchaser had got the presence marked on the stipulated date of sale-deed and it was held that it was sufficient to hold the readiness and willingness, which is not the position here.

The appellant cannot take benefit from Lal Chand's case (supra) as in that case the extensions were reduced into writing, which were not done in the instant case. The observations made in those cases were on account of peculiar facts and circumstances. The appellate Court had rightly held the plaintiff to the recovery of earnest money with interest. I find no reason to interfere with the findings as they are neither illegal nor suffer from perversity The findings are affirmed. Dismissed in limine.

17.03.2017

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No