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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5716 of 2016 (O&M).
Decided on:-February 07, 2017.

Ram Parkash and others

.........Appellants.

Versus

Bhagat Ram.

.........Respondent.

CORAM: ***HON'BLE MR. JUSTICE HARI PAL VERMA***.

Present:- Mr. Abhinav Gupta, Advocate
for the appellants.

HARI PAL VERMA, J.

Appellants-defendants have filed the present regular second appeal against the judgment and decree dated 22.07.2016 passed by learned Additional District Judge, Jalandhar whereby their appeal against the judgment and decree dated 30.07.2015 passed by learned Civil Judge (Junior Division), Jalandhar, was dismissed.

Briefly stated, the respondent-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 10.10.2008 executed by the defendants in favour of the plaintiff in respect of House No.NG-2A, Gazi Gulla, Prabhat Nagar, Jalandhar constructed over an area measuring 5 Marlas (1 Marla=207 sq. feet) as detailed in the head note of the plaint. An alternative relief for recovery of Rs.20 lakhs and also for permanent injunction restraining the defendants from alienating the suit property during pendency of the suit was also sought by the plaintiff.

The suit was based on agreement to sell dated 10.10.2008 executed by Pawan Kumar son of Ram Parkash and Ram Parkash son of Ruldu Ram in favour of the plaintiff. The sale consideration of the suit property was fixed at Rs.30 lakhs and out of this, the defendant had received Rs.7 lakhs as earnest money. The sale deed was agreed to be executed on or before 15.04.2009. On 18.10.2008, another sum of Rs.1 lakh was received by the appellant-defendant, namely, Ram Parkash and his son Pawan Kumar in the presence of Jatinder Kumar and Ashok Sharma, residents of Jalandahr. Necessary endorsement was made regarding this payment on the back side of the first page of the agreement to sell. Thereafter, on 28.11.2008, another sum of Rs.1,50,000/- was paid to by the plaintiff to defendant Ram Parkash and his son Pawan Kumar. On 30.12.2008, both the parties with their mutual consent extended the stipulated date from 15.04.2009 to 30.12.2009. The entry in this regard was also made on the back side of the second page of the agreement. This extension was duly witnessed by Jatinder Kumar and Tarlok Nath. On 31.12.2009 another sum of Rs.10,000/- was received by defendant Ram Parkash and his son Pawan Kumar from the plaintiff and time for execution of sale deed was extended from 30.12.2009 to 30.6.2010. Necessary entry in this regard was made on the back side of the 3rd page of the agreement, which was again witnessed by Jatinder Kumar and Tarlok Nath. In this manner, as on 31.12.2009 defendant Ram Parkash and his son Pawan Kumar had received Rs.9,60,000/- from the plaintiff out of the total sale consideration of Rs.30 lakhs. Thereafter, the plaintiff paid another sum of Rs.40,000/- to vendors Ram Parkash and Pawan Kumar and time for execution of sale deed was extended from 30.06.2010 to 10.08.2010. This extension was made in the presence of Kapil Narula, Tarlok Nath and Jatinder Kumar, the witnesses. However, on 10.08.2010, appellant-defendant No.1 Ram Parkash and his son Pawan Kumar had requested the plaintiff to extend the stipulated date from 10.08.2010 to 17.08.2010, but the appellant-defendant No.1 and predecessor-in-interest of defendants No.2 to 4, namely, Pawan Kumar refused to sign the relevant entry on the back side of the said agreement to sell.

It is the case of the respondent-plaintiff that he has always been ready and willing to perform his part of the agreement right from the date of execution of the agreement till filing of the suit. But, unfortunately, Pawan Kumar son of appellant-defendant Ram Parkash expired and defendant No.1 requested the plaintiff to postpone the execution of the sale deed because of the death of his son, to which the plaintiff agreed. Thereafter, vide notice dated 13.02.2012, the defendants were requested to reach Sub Registrar's office on 05.03.2012 for the purpose of execution of the sale deed in favour of plaintiff on receipt of balance sale consideration. But the appellants-defendants did not come forward to execute the sale deed in favour of the plaintiff. Before the stipulated date, the plaintiff had already got prepared pay orders from Punjab National Bank worth Rs.20 lakhs bearing No.467904 to 467907 for Rs.5 lakhs each, so as to hand over the same to the defendants on account of balance sale consideration at the time of execution of sale deed. The respondent-plaintiff waited for the defendants before the Sub Registrar's Office, Jalandhar along with the pay orders and cash for other miscellaneous expenses, but the defendants did not turn up to execute the sale deed. The plaintiff moved an application before Sub Registrar, Jalandhar for getting his presence marked, but Sub Registrar refused to append his signatures on the ground that there is no such law. The plaintiff has been ready and willing to perform his part of the agreement from the date of execution of the agreement till date. But on 05.03.2012, the defendants did not turn up before Sub Registrar's office, Jalandhar for execution of the sale deed. Hence, the suit.

The defendants appeared and contested the suit by filing a common written statement taking preliminary objections of limitation, cause of action, estoppel and filing of suit on the basis of forged and fabricated agreement. However, on merits, ownership of the suit property of the defendants and execution of the agreement to sell for the sale of house in dispute was admitted. It was also admitted that Pawan Kumar has expired, but it is stated that Pawan Kumar and his father were always ready and willing to perform their part of contract after receiving the balance sale consideration of Rs.23 lakhs. In fact, the legal notice got issued by the plaintiff through his counsel was with regard to the property bearing No.66 situated in the area of Chandan Nagar, Jalandhar alleged to have been executed by Ram Parkash and Pawan Kumar in favour of the plaintiff. The said legal notice was duly replied by the defendants through their counsel. Since the appellants-defendants have never agreed to sell the house bearing No.66 situated in Chandan Nagar, Jalandhar, there was no cause of action for them to reach the office of Sub Registrar, Jalandhar on 05.03.2012. In fact, the respondent-plaintiff till date has not asked the defendants for getting the sale deed executed in his favour regarding the suit property after paying the balance sale consideration of Rs.23 lakhs.

On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether plaintiff is entitled for possession by way of specific performance for agreement to sell dated 10.10.2008? OPP

2. Whether plaintiff is ready and willing to perform his part of contract? OPP

3. Whether plaintiff is entitled for permanent injunction as prayed for? OPP

4. Whether in the alternative the plaintiff is entitled for recovery of Rs.20 lakhs as alleged in the plaint? OPP

5. Whether alleged agreement to sell is forged and fabricated one? OPD

6. Relief.

On the basis of evidence so led by both the parties, the trial Court vide judgment and decree dated 30.07.2015 decreed the suit in favour of the respondent-plaintiff and he was held entitled to the possession of suit property by way of specific performance of the agreement to sell dated 10.10.2008. The appellants-defendants were restrained from alienating the suit property. The relevant observations of learned trial Court read as under:

> "*Having heard ld. counsels for both the parties and upon perusal of the case file, it transpires that the plaintiff has sought possession of the suit property by way of specific performance of the agreement to sell dated 10/10/2008, stated to have been executed by defendant No. 1 and predecessor of defendant No. 2 to 4. Whereas the plaintiff has placed heavy reliance upon the*

agreement to sell (Ex.P1) in order to claim that parties had entered into an agreement to sell the suit property for a sum of Rs. 30 lakh, Rs.7 lakh having been paid as earnest money. The plea of the plaintiff extends further to the endorsements at the rear of the said agreement to sell whereby he claims to have paid another sum of Rs. 3 lakh at various intervals, when the time for execution of the agreement to sell is claimed to have been extended with mutual consent of the parties. It is pertinent to note that on a whole, the defendants have denied the fact of having extended time for agreement to sell or having received earnest amount. However, in their written statement itself, the plea of the defendants has steered towards the claim that the plaintiff having not been ready and willing to perform his part of the agreement, though defendant No. 1 and his deceased son had been always ready and willing to perform their part of agreement after receiving the balance sale consideration of Rs. 23 lakh. Therefore, from the said fact as well as the admissions of the defendant in his deposition, the veracity of the agreement to sell in question cannot be doubted. It is therefore apparent that as far as the receipt of Rs.7 lakh as earnest money at the time of originally entering into the agreement to sell is concerned, the same is also admitted by the defendants. The next question to be answered is as to whether the time for execution of the sale deed had been extended with the mutual consent of the parties and subsequent earnest amount paid to the tune of Rs. 3 lakh in total, taking the entire earnest money amounting to Rs. 10 lakh out of the agreed sale price of Rs. 30 lakh. In this context again, though there has been denial by the defendants in their pleadings, the matter has been clarified to a large extent in the cross examination of defendant No. 1, who clearly admitted his signatures on all the endorsements of extension of time for execution of the sale deed. In light of the *express admission of defendant No. 1 about his signatures, the validity of the endorsements cannot be outrightly rejected. Furthermore, to a specific question of the plaintiff in cross examination, the defendant No. 1 expressly admitted that the endorsements had always been written prior to him having signed the same. Ld. counsel for the defendants has pointed out certain discrepancies in the version of the plaintiff. However, the plaintiff has succeeded in explaining them in the right earnest. A major objection of defendants has been to the effect that the plaintiff was never in possession of sufficient amount required for execution of sale deed, so as to be considered ready and willing to perform his part of the contract in the real sense of the term. Reference has been made to his bank account wherein the balance is stated to have never been to an extent where it could be stated that he had sufficient funds available for the purpose. It has also been pointed out that the plaintiff has stated in his pleadings in para 12 of the plaint that he had been ready and willing to perform his part of agreement and is ready to do so till today. However, it has been stated that the continuation of his readiness and willingness is therefore not apparent, which is sine qua non for seeking specific performance. The said objections of defendants are untenable in light of the fact that firstly in para 7 of the plaint itself, there is specific averments of the plaintiff to the effect that he had always been ready and willing to perform his part of the agreement from the date of execution of agreement to sell, till the filing of suit and further that he will always remain ready and willing for the said purpose. Secondly, only for the fact that the bank account of the plaintiff did not carry sufficient funds for execution of sale deed would not mean that plaintiff had not been ready and willing to perform his part of the contract. It is pertinent to note that plaintiff has examined witness from the* *bank and proved on record the four drafts for Rs. 5 lakh each, which amount to the total remaining sale consideration, to have been got prepared for being handed over to the defendant at the time of execution of the sale deed. This fact is more than sufficient to support the claim of the plaintiff about his having been, as well continuing to be ready and willing to perform his part of contract in making the payment of the balance sale consideration. Therefore, from the entire evidence on record, it is clear that the plaintiff has succeed in proving his continued readiness and willingness as to perform his part of the agreement. The agreement Ex. P1 also having been proved, so having been proved the receipt of amount by the defendants and extension of time at periodical intervals, it becomes the bounden duty of the defendants to execute the sale deed in favour of the plaintiff as per agreed terms. Issue No. 1 and 2 are accordingly decided in favour of the plaintiff and against the defendants. The plaintiff has also sought to restrain the defendants from alienating suit property during the pendancy. Since the plaintiff has proved his entitlement to the suit property after the sale deed is executed, the plaintiff is entitled to the relief of permanent injunction as prayed for. Issue No. 3 is therefore also decided in favour of the plaintiff and against the defendants. Issue No. 4 pertains to alternative relief of recovery. Since the entitlement of the plaintiff to specific performance has been proved, the said issue is decided against the plaintiff. The defendants have failed to prove the agreement to sell in question to be forged and fabricated as discussed hereinbefore detailed. Issue No. 5 is accordingly decided against the defendants.*"

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellants-defendants filed an appeal before the lower appellate Court, but the same was also dismissed by learned Additional

District Judge, Jalandhar vide judgment and decree dated 22.07.2016.

It is in the aforesaid circumstances, the appellants-defendants have filed the present regular second appeal.

The appellants-defendants have formulated the following substantial questions of law:

a) Whether the respondent-plaintiff has been able to stand on his own legs to prove his case?

b) Whether the finding of both the learned Courts below in the facts and circumstances of the present case, are totally perverse and based upon presumptions and misinterpretation?

c) Whether the findings of the Ld. First Appellate Court is a result of total misreading and ignoring the evidence before it, and are thus liable to be set aside?

d) Whether it was incumbent on the Ld. First Appellate Court to follow the principles enshrined in Section 20 of the Specific Relief Act, 1963?

e) Whether the suit for specific performance can be decreed merely because it is lawful to do so?

f) Whether it is incumbent upon the Ld. First Appellate Court before decreeing the suit for specific performance, to determine the genuineness of endorsement and to ensure that alleged endorsement was not shrouded with mystery?

Learned counsel for the appellants-defendants has argued that while passing the impugned judgments and decrees, the trial Court as well as the lower appellate Court have ignored the material evidence available on record. It is the mandate of law that a person approaching the Court must not only aver that he had been ready and willing to perform his part of the contract, but there must further be a specific enumeration to the effect that the said person continues to be ready and willing to perform his part of the contract. As per admission of the respondent-plaintiff, on the stipulated date of execution of sale deed, he was not in possession of sufficient amount. There has never been sufficient amount in the account of plaintiff enabling him to be ready and willing to perform his part of the contract.

He has further argued that PW2 Tarlok Nath was unaware about the number of stamp papers utilized for the agreement to sell as also the number of persons whose names had been mentioned on the same. In this manner, he has shown total ignorance about the contents of the agreement to sell. He has admitted that he is an old friend of the plaintiff. Therefore, he was an interested witness and the trial Court was bound to discard this witness. He has further contended that in view of Section 16(c) of the Specific Relief Act, 1963, it is mandatory on the part of the respondent-plaintiff to prove his readiness and willingness to get the decree for specific performance of the suit property passed in his favour. In the absence of specific averment that the plaintiff is ready and willing to perform his part of the agreement, the suit was liable to be dismissed. He has further argued that even the suit has been filed after 1½ year of the issuance of alleged notice whereas the requirement of readiness and willingness has to be continuous one.

I have heard learned counsel for the appellants-defendants and perused the record.

There is a categoric finding of fact of both the Courts below that the agreement in question was executed on 10.10.2008 and with mutual consent of the parties, it has been extended from time to time. The extension has been duly signed by witnesses. The basic argument as put forward by learned counsel for the appellants-defendants is that the respondent-plaintiff has failed to establish that he was ready and willing to perform his part of the agreement.

In the case of ***Veer Singh Versus Uday Singh alias Gotia 2014(9) RCR (Civil) 774***, the term "readiness and willingness" has been considered by Hon'ble Madhya Pradesh High Court. While relying upon ***J.P. Builders Versus A. Ramadas Rao (2011) 1 SCC 429***, Hon'ble Madhya Pradesh High Court has observed that the words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The only distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

In ***P. D'Souza Versus Shondrilo Naidu 2004 Supp(3) SCR 186***, Hon'ble Supreme Court has held that in a suit for specific performance of a contract, the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will always depend upon facts and circumstances of each case. No straitjacket formula can be laid down in this behalf. The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required to be done in terms of the agreement to sale. Therefore, the term "readiness" and "willingness" has to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned.

Moreover, in ***Harbhajan Singh Versus Sarup Singh 2016(5) RCR (Civil) 172***, while relying upon the judgments of the Apex Court in ***Veerayee Ammal v. Seeni Ammal 2001(4) RCR (Civil) 625*** and ***Phool Pata and another v. Vishwanath Singh and others 2005(4) RCR (Civil) 7***, it has been held by this Court that readiness and willingness of the plaintiff to perform his part of the contract is not a question of law, but is a question of fact.

Therefore, applying the aforesaid judgment and considering the fact that the respondent-plaintiff had appeared before the Sub-Registrar, Jalandhar on 05.03.2012 in order to get the sale deed executed and registered, but the appellants-defendants did not come present on the relevant date, it is sufficiently established that the respondent-plaintiff was ready and willing to perform his part of the agreement and to get the sale deed executed and registered.

This Court has perused the document Ex.DW2/A which is the statement of account of the respondent-plaintiff. The said document shows that the plaintiff had substantial amount in his account during pendency of the agreement period (including the extended period). There is no dispute that the agreement to sell was executed on 10.10.2008 and the respondent-plaintiff has filed the present suit for specific performance of the said agreement on 03.10.2012. Appellant-defendant Ram Parkash has admitted his signatures on each and every page of the said agreement to sell dated

10.10.2008 (Ex.P1). The contention of the appellants-defendants that it is the respondent-plaintiff who was not having the remaining consideration amount and alleged endorsements regarding extension of stipulated date were made due to non-availability of funds cannot be believed and accepted when endorsement dated 18.10.2008 Ex.P2 and endorsement dated 28.11.2008 Ex.P3, the stipulated date 15.04.2009 already fixed vide agreement to sell dated 10.10.2008 was not extended despite making payment of additional amount of Rs.1 lakh and Rs.1,50,000/- respectively to the appellants-defendants by the respondent-plaintiff. Therefore, the argument put forward by learned counsel for the appellants-defendants that the funds were not available with the respondent-plaintiff to get the sale deed executed in his favour as per the agreement to sell dated 10.10.2008, cannot be accepted.

The last endorsement was made vide Ex.P6 whereby the sale deed was agreed to be executed and registered upto 10.08.2010. The plaintiff had visited the office of Sub-Registrar, Jalandhar on 05.03.2012 i.e. the date fixed by him for execution and registration of sale deed in his favour vide notice dated 13.02.2012 Ex.P8 along with balance sale consideration of Rs.20 lakhs in the shape of four demand drafts of Rs.5 lakhs each i.e. Ex.PW3/B to Ex.PW3/E as proved by PW3 A.K. Saini, officer of Punjab National Bank, Circle Office, Hoshiarpur which is apparent from affidavit Ex.P7. Thus, the respondent-plaintiff has filed the present suit on 03.10.2012 which is well within the period of limitation from the stipulated date 10.08.2010.

Both the Courts below have recorded concurrent findings and no fault can be found in the impugned judgments and decrees passed by the Courts below. No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

(HARI PAL VERMA)
JUDGE

February 07, 2017
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No