

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

RSA No.1888 of 2014 (O&M)

Date of decision : 14.09.2017

Surjit Singh

...Appellant

Versus

Harmel Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohd. Yousaf, Advocate for the appellant.

Mr. Harish Sharma, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1 is in appeal against the judgment passed by the learned Additional District Judge, Ludhiana, arising out of a suit for joint possession by way of specific performance of the agreement to sell.

Both the Courts below have concurrently found that the agreement to sell is proved and earnest money has been paid. Learned trial Court, however, refused to grant specific performance of the agreement to sell on the ground that on the target date i.e. on 12.05.2009, the plaintiff did not visit the office of Sub-Registrar. Learned trial Court further observed that the stand taken by the plaintiff is different.

On the other hand, learned First Appellate Court, after noticing the fact that the plaintiff visited the office of Sub-Registrar for execution and registration of the sale deed on 11.05.2009 i.e. a day prior to the date

fixed for execution and registration of the sale deed and he visited on 18.05.2009, has decreed the suit for specific performance of the agreement to sell.

Learned counsel for the appellant has submitted that the learned First Appellate Court has committed an error by interfering in the discretionary power exercised by the trial Court. He has submitted that once plaintiff did not come present on 12.05.2009, before the Sub-Registrar, the amount of earnest money stood forfeited and the agreement to sell had come to an end.

On the other hand, learned counsel for the respondents has supported the judgment passed by the learned First Appellate Court.

It is undisputed position that the target date for execution and registration of the sale deed was 12.05.2009. The plaintiff visited the office of Sub-Registrar on 11.05.2009 as 12.05.2009 was not the day on which the sale deeds are registered. Plaintiff once again visited the office of Sub-Registrar on 18.05.2009 i.e. the next day on which the sale deeds were to be registered. Plaintiff has proved on file that both the affidavits dated 11.05.2009 and 18.05.2009. It is further not in dispute that on 18.05.2009, plaintiff got issued a notice calling upon the defendants to come and execute the sale deed. However, defendants did not reply to the aforesaid notice. Plaintiff filed a suit for specific performance of the agreement to sell on 09.06.2009 i.e. within 27-28 days after the target date was fixed in the agreement to sell.

It is also not in dispute that when the plaintiff appeared in the witness-box as PW3, he specifically stated that 12.05.2009, 13.05.2009,

14.05.2009, 15.05.2009, 16.05.2009, 17.05.2009 were not the days fixed for registration of the sale deed. No suggestion was given to the plaintiff that such statement is incorrect. There is no cross-examination of the plaintiff on this aspect of the matter.

In view of the aforesaid fact, it is proved that the plaintiff was ready and willing on the target date i.e. 12.05.2009. The plaintiff visited the office of Sub-Registrar on the previous day. He even visited on the next working day i.e. on 18.05.2009.

Defendant No.1 in the present case had totally denied the agreement to sell and also denied the receipt of earnest money. He did not appear before the Court with clean hands.

In these circumstances, I do not find any error in the discretion exercised by the First Appellate Court in decreeing the suit for specific performance of the agreement to sell.

Regular Second Appeal is dismissed.

14.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No