

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

**RSA No.3647 of 2014 (O&M)
Date of Decision:31.08.2017**

Ravinder Kumar and another

...Appellants

Versus

Ved Parkash Sethi

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate
for the appellants.

Mr. Gaurav Chopra, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Defendants are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit praying for decree of possession by way of specific relief of agreement to sell dated 08.09.2005 executed by defendants-appellants in favour of the plaintiff-respondent. It is the case of the plaintiff that a constructed three storey shop was agreed to be sold for a total sale consideration of Rs.35,50,000/-. The shop is situated in the area of Abohar Mandi and Rs.5,00,000/- was paid as earnest money. The remaining payment was to be made in installments as Rs.15,00,000/- was payable on 05.11.2005 and the possession was to be delivered to the plaintiff and date for execution and registration of sale deed was fixed as 05.01.2006 when another payment of Rs.10,00,000/- was agreed to be paid to the defendants.

It was further agreed that remaining payment of Rs.5,00,000/- shall be payable after 15 months of the registration of the sale deed along with interest at the rate of 1% per month. It is further the case of the plaintiff that the defendants deliberately avoided the payment of Rs.15,00,000/- and therefore, a writing was executed on 17.11.2005 when the period of payment of Rs.15,00,000/- was extended and delivery of possession was delayed up to 15.12.2005.

Defendants in the written statement pleaded that they had borrowed a sum of Rs.5,00,000/- from the plaintiff and agreed to repay the amount with interest at the rate of 1% per month and the plaintiff obtained the signatures of the defendants on blank papers as security. Defendants further asserted that the plaintiff started demanding the said amount but since defendants were unable to pay the amount, therefore, again signatures were obtained on the blank stamp papers from the defendants. Defendants further pleaded that the amount was repaid but, however, plaintiff did not return the signed blank papers.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. It was found by the learned trial Court that there was a agreement to sell between the parties. The stand taken by the defendants that it was only loan transaction, was rejected. It was found that the plaintiff was always ready and willing to perform his part of the contract.

Defendants filed the first appeal. The learned first Appellate Court after re-appreciating the evidence available on the file dismissed the appeal filed by the defendants.

Learned counsel for the appellants argued that the suit for

specific performance of the agreement to sell is not with respect to the property agreed to be sold. He has referred to the Court various khasra numbers. Learned counsel for the appellants has further argued that agreement to sell was not a concluded contract and therefore, decree for specific performance could not be passed. He has further submitted that the agreement was not specifically enforceable.

I have heard the learned counsel for the parties and with their able assistance gone through the records of the case.

It is not in dispute that the agreement to sell is with respect to a three storey shop owned by the defendants. Apart from the land, underneath the shop, the property identified by giving details of the property on all four sides. Details of the property on all four sides was given details of the property. All four sides was given so as to identify the property. Once the property is situated within a city in a developed area, the relevance of khasra numbers would not be material. The parties were clear in their mind while entering into agreement to sell that the three storey shop owned by the defendants is agreed to be sold.

The boundaries as given in the agreement are as under:

East	Street No.12;
West	Shop of Kamlesh Kumar Sham Lal;
North	Shop of Bala Ji General Store;
South	Circular road situate at the Ist corner of street No.12 on Circular Road, Abohar.

Learned counsel for the appellants has further argued that the area of the shop for which specific performance is prayed comes to 360 square feet whereas in the agreement to sell it has been described as 346

square feet.

I have considered the arguments. In my considered opinion, there is no force in the same. Firstly, this plea was neither raised before the Courts below nor such defence was taken in the pleadings. Secondly, the difference is hardly of 14 square feet. Once the property was identified by the description of the property given on four sides, then the agreement to sell was with respect to three storey constructed shop. A small difference in the area cannot visit the plaintiff with adverse consequences. This at the most can be called a mutual mistake between the parties. The Court would not throw the case of the plaintiff on such small mistake particularly when it is proved on the file that agreement to sell was executed for the purpose of sale of a particular well identified property.

Learned counsel for the appellants is also not right in submitting that agreement to sell was not specifically enforceable. It was a concluded contract. Agreement to sell is a complete contract between the parties. The agreement to sell with respect to immovable property is enforceable. Defendants had received a sum of Rs.5,00,000/- towards earnest money. They had promised to sell the shop to the plaintiff on receipt of balance sale consideration. In these circumstances, it is not possible to hold that it was not a concluded contract.

Learned counsel for the appellant has further argued that such a contract is not enforceable in view of provisions of Section 14(1) (c) of the Specific Relief Act, 1963. I have considered the arguments, however, I do not find any force in the same. This case would not fall within the scope of Section 14(1) (c) of the Act because specific performance of the contract is enforceable as per Section 10 of the Specific Relief Act, 1963. Section 14(1) (c) of the Act

is dealing with the contract which is in its nature determinable. In this case, the contract is not determinable.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal dismissed.

31.08.2017
pvd

(ANIL KSHETARPAL)
JUDGE

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