

RSA No. 1080 of 2017 (O&M)

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

**RSA No. 1080 of 2017 (O&M)
Date of Decision: 24.7.2017**

Tara Chand Saini

.....Appellant

Vs.

Ramanand Jangra

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Manoj Makkar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 2481-C-2017

Applicant seeks condonation of delay of 12 days in making the deficiency of court fee good.

Learned counsel for the applicant submits that deficiency of court fee has already been made good. In this view of the matter, instant application is allowed.

CM stands disposed of.

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Unsuccessful defendant is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance of agreement to sell dated 4.9.2006 was decreed.

Brief facts of the case, as recorded by the learned first appellate

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court in para 2 of its impugned judgment, are that defendant represented to him that he was owner in possession of land measuring 0 kanal 10 marla bearing rectangle/killla No.150//9/2 comprising in khewat No.194 khatoni No. 292 situated within territorial jurisdiction of Dadri, by virtue of sale deed No. 2553 dated 29.11.1982 and plaintiff had agreed to purchase the same on 4.09.2006 at the rate of ₹2000/- per square yard. An amount of ₹1,00,000/- was paid by the plaintiff to the defendant as earnest money. It was agreed that balance sale consideration would be paid at the time of registration of sale deed on 6.11.2006. It was further agreed that in case defendant failed to register the sale deed in favour of plaintiff or his nominee, he was entitled to receive double the amount of earnest money recoverable from the defendant, his heirs/successors and properties.

It was further agreed that in case plaintiff failed to get the sale deed executed and registered in his favour or his nominee, the amount of earnest money would be forfeited. After informing the defendant, plaintiff came in the office of Sub-Registrar, Charkhi Dadri in the morning of 6.11.2006 along with balance sale consideration and registration expenses but defendant did not turn up. Plaintiff, after waiting for whole of the day, got an affidavit of his presence attested from the Sub-Registrar, Charkhi Dadri.

It was averred that thereafter, plaintiff sent a legal notice under registered cover through his counsel to the defendant and in response, defendant asked him to obtain clearance regarding the suit land and he would get sale deed executed in his or his nominee's favour, though the liability to obtain clearance certificate was of the defendant. Despite repeated requests to defendant to get sale deed executed and registered in

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favour of plaintiff, the defendant refused to perform his part of contract. Plaintiff was still ready to perform his part of contract and getting the sale deed executed and registered on payment of balance sale consideration but the defendant instead of performing his part of agreement had turned dishonest and refused to get the sale deed registered. Rather the defendant clearly refused to perform his part of contract about a week ago which necessitated the present suit. By way of suit, a decree for possession by way of specific performance between the parties in respect of suit land was sought with costs.

Having been put to notice, defendant appeared and filed his 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 the parties to the suit have entered into an agreement to sell dated 4.9.2006?OPP
- 2 If so, whether the plaintiff is entitled to a decree of specific performance of contract dated 4.9.2006?OPP
- 3 Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 4 Whether the plaintiff has no locus standi and no cause of action to file the present suit?OPD
- 5 Whether the suit of the plaintiff is barred by law of limitation?OPD
- 6 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 plaintiff has duly proved his case. Agreement to sell dated

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4.9.2006 (Ex.P1) as well as payment of earnest of money were duly established on record. Plaintiff also duly proved his readiness and willingness to perform his part of contract. In this regard, he produced his affidavit (Ex.P2), so as to show that he was present in the office of Sub-Registrar on the date and time fixed for the purpose of execution of the sale deed. Accordingly, suit for possession by way of specific performance of agreement to sell filed by the plaintiff was decreed by the learned trial court, vide impugned judgment and decree dated 27.2.2015. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 3.11.2016. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

Learned counsel for the appellant could not raise any substantive argument in favour of the appellant and against the concurrent findings of facts recorded by both the learned courts below. The argument raised on behalf of the appellant that suit was filed by plaintiff at the fag end of the limitation period would alone not be sufficient to non suit the plaintiff once he has duly proved on record the agreement to sell, payment of earnest money as well as his readiness and willingness to perform his part of contract. Defendant-appellant had neither any justified reason to dispute the pleaded case on behalf of the plaintiff, nor he could produce sufficient evidence to non suit the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

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A bare perusal of the agreement to sell dated 4.9.2006 would show that an amount of ₹1 lac was paid to the defendant-appellant as earnest money and target date was fixed on 6.11.2006. Plaintiff remained present in the office of Sub-Registrar on 6.11.2006. However, it was the defendant who failed to turn up, because of which the sale deed could not be executed. Plaintiff-respondent duly proved that he was present in the office of Sub-Registrar along with remaining amount on the target date, i.e. 6.11.2016, for getting the sale deed executed.

A combined reading of the both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that it was the defendant-appellant who was trying to avoid execution of the sale deed and that too, for no good reasons. Under these undisputed facts and circumstances, 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 Additional District Judge rightly re-considered and appreciated true facts of the case as well as the evidence available on record and found that findings recorded by the learned trial court were well justified. Relevant and cogent findings recorded by the learned first appellate court in para 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“On appreciation of the evidence adduced by both the sides, it is established that the testimony of plaintiff and both the attesting witnesses has remained consistent and nothing to shatter their veracity could be elucidated during their cross-examination by the

defendant to extract anything favourable to them. Affidavit Exh.P2 tendered by the plaintiff showed that he appeared before Sub-Registrar on 6.11.2006 to get sale deed executed and he got his presence recorded but defendant did not turn up. Even after receiving reply Exh.P4, defendant has failed to execute the sale deed. In view of my aforesaid discussion, I am of the considered opinion that the defendant has failed to prove his version on all fronts whereas the evidence led by the plaintiff is cogent and convincing and inspires confidence. Only dispute between the parties was regarding readiness and willingness to perform their part of agreement and from the evidence, it is proved that plaintiff appeared before the Sub-Registrar to get the sale deed executed and it is the defendant who committed default and failed to abide by the terms and conditions of the agreement and is thus not justified in forfeiting the earnest money. Since, plaintiff has always been ready and willing to perform his part of agreement but defendant failed to execute the sale deed, the plaintiff has a legal right to get double the amount or to get the sale deed executed from the defendant in respect of the suit land detailed in agreement Exh.P1 which property was purchased by the defendant vide registered sale deed No. 2553 dated 29.11.1982 (clearly mentioned in Exh.P1). However learned trial court granted the relief of specific performance and refused the relief of double the amount of earnest money. There is thus no illegality or infirmity in the impugned judgment and decree and findings on issue Nos. 1 and 2 are accordingly affirmed. ”

During the course of hearing, learned counsel for the appellant 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

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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 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.

24.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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