

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2656 of 2017 (O&M)
Date of decision:11.7.2017**

Lakhwinder Singh

...Appellant

Versus

Tilak Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sunil Agnihotri, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment of reversal dated 4.10.2016 passed by the learned first appellate court, granting alternative relief for recovery of earnest money along with interest, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that suit for confirmation of possession as owner of double storey shop situated in the area of village Urmur, Tehsil Dasuya District Hoshiarpur shown red in the site plan for specific performance of the agreement to sell dated 3-2-2004 was filed by the plaintiff. It was submitted that defendant was owner of property in dispute and he vide agreement to sell dated 3-2-2004 agreed to sell the same to the plaintiff for total consideration of Rs.4 lacs. An amount of Rs.2,65,000/- was paid as earnest money and it was stipulated that sale-deed would be executed on or before 3-2-2005. The plaintiff remained ready and

willing to perform his part of the agreement but the sale deed could not be executed on the date fixed as defendant received another sum of Rs. 1,00,000/- on 25-8-2005 and date for execution and registration of sale deed was extended upto 10-7-2006 and an endorsement to this effect was made on the back of the original agreement to sell and possession of shop was handed over to the plaintiff. The amount of Rs.3,65,000/- had already been paid to the defendant. The plaintiff remained present in the office of Joint Sub Registrar Tanda on 10-7-2006 along with balance sale consideration but the defendant did not turn up. The plaintiff got his presence marked by getting an affidavit attested from the Executive Magistrate Tanda. The plaintiff was entitled to execution of the sale deed in his favour by specific performance of agreement to sell dated 3-2-2004. In case the plaintiff was not found entitled for execution of sale deed and then he was entitled to alternative relief for recovery of Rs.4,00,000/- along with interest from the date of payment. Plaintiff always remained ready and willing to perform his part of agreement to sell and was still ready and willing to perform his part of agreement. Despite repeated requests of the plaintiff, the defendant did not execute the sale deed in favour of the plaintiff, as per the agreement.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. It was pleaded on behalf of the defendant that he never intended to sell the property to the plaintiff. He intended only to take loan from the plaintiff. He also alleged that the endorsement dated 25.8.2005, on the back page of the alleged agreement to sell, was a forged and fabricated one.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1 Whether defendant has entered into an agreement to sell the property and executed agreement to sell dated 3-2-2004 in favour of plaintiff after receiving earnest money ? OPP

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

3 Whether plaintiff is entitled to specific performance of the agreement dated 3-2-2004.?OPP

4 Whether the plaintiff is entitled to alternative relief of recovery of Rs.4,00,000/- alongwith interest as prayed for ? OPP

5 Whether the plaintiff has concealed the material facts from this court? If so,its effect ?OPD

6 Whether the agreement is forged and fabricated document and is without consideration ?OPD

7 Whether the plaintiff has no cause of action to file the present suit ?OPD

8 Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court decreed the suit of the plaintiff by way of judgment and decree dated 16.8.2013. Defendant filed his first appeal, which was allowed by the learned first appellant court, vide its judgment

and decree dated 4.10.2016. Hence this second appeal, at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the suit property was a double storeyed shop. The alleged agreement to sell was dated 3.2.2004. The suit was filed by the plaintiff on 6.6.2007. It was a suit for possession by way of specific performance of agreement to sell. The total sale consideration was Rs.4 lacs out of which plaintiff claimed to have paid Rs.2,65,000/- as earnest money to the defendant. The target date as per stand taken by the plaintiff was 25.8.2005 and on the said date, he again paid an amount of Rs.1 lac to the defendant, getting the target date further extended till 10.7.2006, in spite of the fact that only amount of Rs.35,000/- more was left to be paid.

This fact itself does not appeal to reason at all. Once the plaintiff had paid Rs.3,65,000/- out of the total sale consideration of Rs.4 lacs, there remains no scope for further extension of time for getting the sale-deed executed and that too for about one year. Under these circumstances, the allegations levelled by the defendant that he never intended to sell the suit property to the plaintiff seems to be well justified. Appreciating this relevant aspect of the matter, coupled with other attending circumstances, the learned first appellate court arrived at its judicious conclusion in favour of the defendant and against the plaintiff, while allowing the first appeal of the defendant, vide its impugned judgment and decree dated 4.10.2016 and the same deserve to be upheld.

Appellant being the plaintiff, onus was on him to prove his

pleaded case by producing cogent and convincing evidence. However, he failed to do so. Further, it was certainly a case of undue hardship qua the defendant and the provisions of law contained in Section 20 of the Specific Relief Act would certainly come to the rescue of the defendant in such a situation. It is the settled proposition of law that even if an agreement to sell is proved on record, it is not always necessary that the plaintiff would be automatically held entitled for a decree of specific performance.

Each case is to be considered and decided as per its own peculiar facts and circumstances. The case in hand would certainly fall within one of the exceptions carved out by the Parliament itself. Having said that, this Court feels no hesitation to conclude that the learned first appellate was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 9 of its impugned judgment, which deserve to be noticed here, read as under:-

“...The case of the appellant is that he had taken loan of Rs.2,00,000/- and his signatures were taken on blank papers which have been used later on for scribing the agreement to sell of shop in dispute. The agreement to sell dated 3-2-2004 has been proved on record as Ex.P1. Perusal of the same shows that proeperty was agreed to be sold for total consideration of Rs.4,00,000/- and earnest money to the tune of Rs. 2,65,000/- is stated to have been given to the present

appellant . However one year time was fixed for execution of sale deed i.e. the sale deed was to be executed on 3-2-2005. It is not case of the respondent that property was mortgaged. No reason has been given for fixing one year time for execution of sale deed. The endorsement Ex.P5 has been proved on record by the respondent vide which on 25-8-2005 the time has been extended till 10-7-2006. The affidavit Ex.P4 has been proved on record by the respondent to show that he remained present before the Sub Registrar on 10-7-2006. As per endorsement dated 25-8-2005 Rs. One lac is stated to have been given to the appellant while extending the time till 10-7-2006. The date below the signatures of present appellant has been erased and this suspicious circumstance has not been explained by the respondent . Even otherwise, in the affidavit though it has been mentioned that Rs. 2,65,000/- were paid as earnest money and the sale deed was to be executed and registered on 3-2- 2005 but nowhere it has been mentioned that Rs. One lac was paid on 25-8- 2005 . In the plaint, respondent has not mentioned that he was ready and willing to perform his part of agreement on 3-2-2005 i.e. the date mentioned in the agreement to sell for execution of sale deed . In the affidavit Ex.P4, vide which presence was marked before the Sub Registrar it has been mentioned that on 3-2-2005, the present appellant had got date fixed as 10-7- 2006 for execution of sale deed due to his some family problem. However payment of amount on 25-8-2005 to the tune of Rs. One lac has not been mentioned in the affidavit. In the endorsement nowhere it has been mentioned that time was extended for one year on 3-2-2005 rather in the endorsement time is stated to have been extended on 25-8-2005. This all cast serious doubt about the case of respondent. At the first instance, the date of one year was fixed for execution of sale deed although there was no reason for fixing of such long time especially in view of the fact that a sum of Rs.2,65,000/- has already been paid to the respondent which

shows that property was never intended to be sold and rather agreement to sell was executed just for security of loan transactions. It is even otherwise surprising as to why on 25-8-2005, the time was extended for one year , although as per respondent out of total consideration of Rs. 4,00,000/- Rs. 3,65,000/- were already paid to the appellant. There was no occasion for extending the time for one year on 25-8-2005 while paying Rs.1,00,000/- by the respondent. Thus endorsement dated 25-8-2005 seems to be forged and fabricated. It is categorical stand of the appellant that he had taken loan of Rs.2,00,000/- . Thus respondent was only entitled for recovery of Rs. 2,00,000/- and not entitled for specific performance of the agreement to sell dated 3-2-2004. The authorities relied upon by learned counsel for the respondent are not at all applicable to the facts and circumstances of the present case.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

11.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No