

106 RSA No.6406 of 2014 (O & M)
RSA No.497 of 2015 (O & M)

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

**RSA No.6406 of 2014 (O & M)
Date of decision :10.08.2017**

Naresh Kumar

...Appellant

Versus

Parkash Chand and others

...Respondents

RSA No.497 of 2015 (O & M)

Naresh Kumar

...Appellant

Versus

Parkash Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. Kanwaljeet Singh, Senior Advocate with
Mr. Parunjeet Singh, Advocate for the respondents.

ANIL KSHETARPAL, J.(Oral)

By this common judgment I shall be disposing of RSA No.6406 of 2014 and RSA No.497 of 2015 as both the appeals arise out of the same suit.

Plaintiff is appellant in both the appeals. Plaintiff had filed a suit for specific performance of agreement to sell dated 20.11.2006 with respect to the land measuring 180 square yards situated within municipal limits of Kot Kapura. The suit was filed on 17.02.2009. As per agreement to sell, the target date for execution and registration of sale deed was 07.04.2007. Plaintiff had pleaded that the defendants have failed to perform their part of contract and, therefore, decree for specific performance of agreement to sell should be granted in his favour.

In defence, defendants admitted the execution of the agreement.

Defendants also admitted receipt of earnest money amounting to Rs.9,00,000/-. However, it was pleaded that the plaintiff was never ready and willing to perform his part of the contract. Defendants also filed counter claim seeking possession of the suit property.

Learned trial court after appreciating the evidence available on the file, recorded a finding of fact that the plaintiff was not ready and willing to perform his part of the contract. With this finding, the suit filed by the plaintiff is ordered to be dismissed.

However, the learned trial court dismissed the counter claim filed by the defendants on the ground that time was not essence of the contract.

Two appeals were preferred before the learned First Appellate Court. One by the plaintiff, and second by the defendants. Learned First Appellate Court after re-appreciating the evidence available on the file, affirmed the finding of the learned trial court that the plaintiff was not ready and willing to perform his part of the contract. However, learned First Appellate Court accepted the appeal filed by the defendants and held that the defendants are entitled to possession of the property.

I have carefully heard learned counsel for the parties and with their able assistance gone through the record.

Learned counsel for the appellant has made three submissions:-

- (i) Finding of court below that the plaintiff was not ready and willing to perform his part of the contract, is erroneous;
- (ii) since time was not essence of the contract as found by the courts below, therefore, the plaintiff could get the sale deed registered at any time and hence the findings that the plaintiff was not ready and willing to perform his part of the contract, is erroneous;

(iii) conduct of parties and particularly that of the defendants shows that the defendants were not ready and willing to perform their part of the contract.

On the other hand, learned counsel for the respondents has submitted that there is a concurrent finding of fact against the appellant to the effect that the appellant was not ready and willing to perform his part of the contract. Learned counsel for the respondents has further pointed out that the evidence led by the appellant is beyond the pleadings. The reason given by the appellant for not agreeing to get the sale deed executed, is beyond pleadings.

I have considered the arguments of learned counsel for the parties.

In this case, it is not in dispute, that the agreement to sell was executed on 20.11.2006. It was agreed between the parties that the sale deed would be got executed and registered on 07.04.2007. On 07.04.2007, it is not proved on the file that the plaintiff visited the office of the Sub Registrar to get the sale deed executed. Although the plaintiff has asserted in his evidence that he did visit, however, no document has been placed on the file. After 07.04.2007 there is complete silence on the part of the plaintiff. Plaintiff for the first time calls upon the defendants to execute the sale deed on 16.09.2008 vide notice Ex.P-7. Thereafter another notice is sent on 20.12.2008. However, a reading of cross-examination of the plaintiff shows that he was still not ready and willing to perform his part of the contract.

The agreement to sell does not provide that the defendant Nos.3 and 4 would first get the property mutated in their name. Defendants No.1 and 2 are recorded to be owners of the property. In the agreement itself it is recorded that as per municipal record, the owner is Bihari Lal. However, his legal heirs are defendant Nos.3 and 4. In these circumstances, once the

plaintiff has failed to prove that he was ready and willing prior to the filing of

the suit or even on the date of filing of the suit or on the date he made a statement, the findings of the courts that the plaintiff was not ready and willing, cannot be faulted.

Learned counsel for the appellant has further submitted that since as per the findings of the court, time was not essence of the contract, therefore, plaintiff could file a suit at any point of time. In this case, agreement to sell itself prescribes the target date for execution and registration of sale deed which is on 07.04.2007. There is a complete silence from the side of plaintiff for a period of one year and five months. The plaintiff does not even visit the office of Sub Registrar to get the sale deeds executed. Plaintiff has not proved that he was not having sufficient funds to get the sale deeds executed. A reading of statement of plaintiff shows that he has been making contradictory statement as at one point of time he has submitted that he had been ready with cash which he had withdrawn from his business; whereas on the other hand, he says that he borrowed the money from some relatives that itself shows that the plaintiff has not come to the Court with clean hands.

Finding no merit in the appeal and the same is accordingly dismissed.

10.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No