

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1300 of 2018

Date of Decision: 26.02.2018

Jagga Singh & anr.

... Petitioners

Versus

Gursewak Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Arun Kumar Vasudeva, Advocate,
for the petitioners.

RAMENDRA JAIN, J.(Oral)

Through the instant petition under Article 227 of the Constitution of India, the petitioners-defendant have laid challenge to the order dated 15.12.2017 (Annexure P-7) of the First Appellate Court, whereby the application of the respondent-plaintiff under Order 39 Rules 1 and 2 CPC read with Section 151 CPC was accepted for restraining the petitioners from alienating the suit land till final disposal of the suit by reversing the order dated 24.03.2017 (Annexure P-6) of the trial Court.

In nutshell, the petitioners agreed to sell their property to the respondent-plaintiff at the rate of ₹17,95,000/- per acre and received ₹37,00,000/- as earnest money out of total sale consideration of Rs.1,45,84,375/- at the time of execution of agreement to sell dated 07.10.2016, wherein the date for registration and execution of sale deed was fixed as 10.11.2016. However, with the mutual consent of both the sides, the said stipulated date was extended to 28.11.2016 on which date the respondent-plaintiff did not come present before the Sub-Registrar with balance sale consideration for execution and registration of the sale deed, whereas the petitioners came present and got marked their presence.

Thereafter, the respondent-plaintiff after serving a legal notice upon the petitioners filed a suit for specific performance against the petitioners pleading that after 28.11.2016, the date was further extended for execution and registration of sale deed on becoming financial conditions normal, which had tightened on account of demonetization on 08.11.2016.

According to the respondent-plaintiff, after lifting of ban over the frequent flow of currency, he served a legal notice to the petitioners to come present on 09.01.2017 for execution and registration of sale deed on which date he went to the office of Sub-Registrar with the balance sale consideration, but the petitioners did not appear, forcing him to file suit for specific performance along with the application filed by him under Order 39 Rules 1 and 2 CPC read with Section 151 CPC for restraining the petitioners from alienating the suit land till disposal of the suit.

The trial Court dismissed the application aforesaid of the respondent-plaintiff vide order dated 25.03.2017.

Being aggrieved, the respondent-plaintiff filed an appeal, which was accepted vide impugned order dated 15.12.2017, thereby restraining the petitioners from alienating the suit land in any manner till disposal of the suit.

Learned counsel for the petitioners contends that the First Appellate Court failed to appreciate that non-appearance of the respondent-plaintiff on the extended agreed date i.e. 28.11.2016 before the Sub-Registrar in itself prima facie shows that the respondent-plaintiff was not ready and willing to perform part of his contract. Therefore, it ought to have affirmed the order of the trial Court (Annexure P-6). In support of his contention, learned counsel has placed reliance on the decisions of this Court in Gulab Rai Vs. Atam Singh, 1998 (1) RCR (Civil) 542, Iqbal Singh Vs. Karan Podar,

2010(2) PLR 453, Sarup Singh and others Vs. Nirmal Singh, 1997(2) R.C.R. (Civil) 563.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, I find that the instant petition is completely devoid of any merit for the reasons to follow.

Handsome amount of ₹37,00,000/- has already been received by the petitioners from the respondent-plaintiff at the time of execution of agreement to sell. The version of the respondent-plaintiff that it was agreed between the parties that on ease of the currency position after demonetization, the sale deed would be executed and registered. Consequently, when the position became normal, he served a legal notice upon the petitioners to come present before the Registrar on 09.01.2017 cannot be disbelieved, inasmuch as serving of legal notice upon the petitioners calling upon them to come present for the said purpose in itself is sufficient to draw an inference that the respondent-plaintiff was always ready and willing to perform his part of contract.

The facts and circumstances of the above-mentioned citations relied upon by learned counsel for the petitioners are not identical to the facts of the present, rather are distinguishable. Therefore, no benefit of the same can be given to the petitioners.

I have gone through the impugned judgment of the First Appellate Court and found no illegality or perversity in the same.

Accordingly, the petition is dismissed.

26.02.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No