

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.1588 of 2012 (O&M)
Date of Order:04.07.2018

Mangal

..Appellant

Versus

Sube Singh (since deceased) through LR.

..Respondents

(2) RSA No.1516 of 2013 (O&M)

Mangal

..Appellant

Versus

Sube Singh (since deceased) through LR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Randhir Singh Hooda, Advocate,
for the appellant.

Mr. Virender Rana, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

These two appeals filed by the defendant-appellant are arising from the separate suits for possession by way of specific performance of the agreement to sell which have been decided by separate judgments. However, since the issue which needs determination is common, therefore, counsel for the parties are agreed that these appeals can be conveniently disposed of by a common judgment.

In Regular Second Appeal No.1516 of 2013, learned trial court dismissed the suit, whereas the learned first appellate court has reversed the

judgment. Whereas in Regular Second Appeal No.1588 of 2012, defendant-appellant is in the regular second appeal against the concurrent findings of fact.

Plaintiff propounds two agreement to sell dated 19.01.2006, executed by the defendant-appellant. One is with respect to land measuring 14 kanals and 5 marlas for a total sale consideration of Rs.24,04,688/- and earnest money of Rs.2,40,000/- was paid. In the other case, agreement to sell is with respect to land measuring 2 kanals and 6 marlas for a total sale consideration of Rs.13,50,000/- and earnest money of Rs.38,000/- was paid.

As per agreement to sell between the parties, the last date for execution and registration of the sale deed was agreed to be 20.04.2006. In the agreement to sell, the words used are that this would be the last date for execution and registration of the sale deed.

Parties to the litigation neither dispute execution of the agreements to sell nor receipt of the earnest money. It is the case of the defendant in the written statement itself that on the target date for execution and registration of the sale deed, plaintiff, although, was present in the office of the Sub-Registrar, however, was not having balance sale consideration and expenses for affixation of stamp etc. In paragraph 4 of the written statement in both the suits, the defendant did take this specific stand.

It is also not in dispute that after 20.04.2006, plaintiff did not take any step for a period of 2 years 7 months and 15 days. Plaintiff for the first time is alleged to have issued notice to the defendant on 04.12.2008, whereas the suit came to be filed in the end of January, 2009.

The questions which need consideration are:-

- (i) Whether in the facts and circumstances of the present case, the courts below were correct in decreeing the suit for specific performance of the agreement to sell or not?
- (ii) Whether it is obligatory for the court to analyze the evidence and thereafter exercise discretion as per Section 20 of the Specific Relief Act, 1963 ?

In the present case, plaintiff inspite of knowing the defence of the defendant, did not lead any evidence to prove that he was possessed of sufficient resources for execution and registration of the sale deed on 20.04.2006. Plaintiff was required to pay under the two agreements, more than Rs.34,75,000/-. However, plaintiff has not led any documentary evidence to prove availability of the funds with him on the day i.e. 20.04.2006.

Still further, as noted earlier, after the target date for execution and registration of the sale deed i.e. 20.04.2006, plaintiff remained silent for a period of 2 years 7 months and 15 days. Had the plaintiff been ready and willing to perform his part of the contract? He would have taken some steps or even got a notice issued calling upon the defendant to come and execute the sale deed.

Now let's answer the questions of law.

Since, as discussed above, the plaintiff has failed to lead any documentary evidence proving the availability of more than Rs.34,75,000/- on the target date i.e. 20.04.2006 except bald oral statement, this Court is of the opinion that the plaintiff failed to prove that he was ready and willing to perform his part of the contract. In a suit for specific performance, when the

defendant has specifically pleaded that the plaintiff was not having sufficient funds for execution and registration of the sale deed, it was obligatory on the part of the plaintiff to lead some evidence in order to prove availability of the funds with him. Plaintiff would have produced his bank account statement or any other evidence to prove the availability of the funds. Mere oral assertions in the evidence cannot be solely relied upon by the court to record finding that the plaintiff was having sufficient funds available with him on the date of agreement to sell particularly when the only defence taken in the written statement was that the plaintiff was not having the funds.

It is further obligatory for the court to examine the facts and the evidence available on the file before granting a decree for specific performance of the agreement to sell. As per Section 20 of the Specific Relief Act, 1963, the decree for specific performance is discretionary. The court while exercising the discretion is required to be guided by sound and reasonable judicial principles. The discretion cannot be allowed to be exercised arbitrarily. In the present case, both the courts below have not examined whether the discretion should be exercised in favour of the plaintiff or not? On evaluation of the evidence particularly keeping in view the two factors i.e. (i) no evidence to prove availability of funds; (ii) plaintiff having remained completely silent for a period of 2 years 7 months and 15 days, this court finds that the plaintiff is not entitled to relief of specific performance of the agreement to sell.

In view of the above, the questions framed in the previous part of the judgment are answered in favour of the appellant.

In one of the cases, learned first appellate court while reversing

the judgment of the trial court has held that the time for registration of the sale deed was not the essence of the contract. In the considered view of this court, such finding is erroneous because in the agreement to sell it is specifically recorded that the last date for execution and registration of the sale deed agreed between the parties is 20.04.2006. Once the last date has been mentioned, the court was not correct in returning a finding that the time was not essence of the contract.

Taking into consideration the facts involved in the present case, this court is of the considered opinion that the decree for possession by way of specific performance of the agreement to sell is liable to be set aside and in its place, plaintiff is only entitled to relief of refund of the earnest money in both the appeals. The amount shall be refunded along with interest @ 6% per annum from the date of payment till realisation.

The decrees passed by the courts below shall stand modified accordingly.

July 04, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No