

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

RSA No.3221 of 2013 (O&M)

Date of decision: 04.09.2018

Gurnam Singh

..... Appellant

Versus

Baljinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aakash Singla, Advocate
for the appellant.

Mr. S.S. Rangi, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell.

In the present case, the execution of the agreement to sell and receipt of earnest money is undisputed. So the question which requires consideration of the Court was whether the plaintiff was ready and willing to perform his part of the contract or not.

Both the Courts have noticed that the suit was filed within four months of the target date fixed in the agreement to sell for execution and registration of the sale deed. Still further, the plaintiff in his plaint had pleaded that he was ready and willing to perform his part of the contract and he visited the office of the Sub-Registrar on the target date i.e. 10.02.2000 and got his presence marked.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has raised the following two contentions:-

1. That total sale consideration has not been mentioned in the agreement to sell and therefore, there cannot be any specific performance.
2. The plaintiff has failed to prove by leading positive evidence to the effect that he was carrying sufficient balance amount on the target date when he visited the office of the Sub-Registrar.

This Court has considered the submissions. In the agreement to sell, it is specifically mentioned that the land is agreed to be sold at Rs.54,500/- per bigha. The total land is 15 kanals and 18 marlas. It is also recorded that Rs.1,86,000/- has been received as earnest money. Thus, the total sale consideration could be worked out very easily. It was known to the parties that how much is the total sale consideration.

Second submission of learned counsel for the appellant is that the plaintiff was not carrying the sufficient money on the day fixed for execution and registration of the sale deed. As noticed earlier, the plaintiff has stated this fact in the plaint and has supported this fact while appearing in the witness-box as PW-1. He has specifically stated that on 10.02.2000, the date for execution and registration of the sale deed, he remained present along with the remaining amount as also amount for expenses for getting the sale deed registered along with his father and Pal Singh, Sarpanch. In the cross-examination, only suggestion given to the plaintiff was that he did not had the money. Apart from the bald suggestion, no further cross-

examination was carried out for probing from where the plaintiff has arranged the money or details of his sources. In such circumstances, but for a bald suggestion, there is no evidence available on the file to even remotely suggest that the plaintiff was not having the sufficient amount for getting the sale deed registered. Coupled with this, it will be noticed that the suit was filed after a period of four months although the limitation for filing such suit is three years.

In these circumstances, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

04.09.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No