

In the High Court of Punjab and Haryana at Chandigarh

RSA- 2277 of 2016(O&M)

Date of Decision:27.3.2018

Sukhwinder Kaur

---Appellant

vs.

Lakhwinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Sekhon, Advocate
for the appellant
Mr. Raman Goklaney, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 20.1.2016 passed by the District Judge, Ferozepur whereby appeal filed by the respondent-plaintiff against judgment and decree dated 15.10.2014 passed by the trial court dismissing suit of the respondent-plaintiff was set aside and suit filed by the respondent-plaintiff for specific performance of agreement to sell dated 10.4.2008 was decreed to the following effect:-

“.....The suit of the plaintiff is decreed with costs for possession by way of specific performance of the agreement to sell dated 10.4.2008 executed by defendants No. 1 and 2 in favour of the plaintiff with regard to the suit property on payment of sale consideration of Rs.

2,93,500/-, after deducting an amount of Rs. 70,000/- already paid as earnest money. It is further directed that the plaintiff shall deposit the balance amount of sale consideration within a period of two months in the learned trial court and thereafter, within a period of one month, the defendants No. 1 and 2 will execute the sale deed in favour of the plaintiff with regard to the suit property. It is further directed that the sale deed dated 28.12.2009 executed by defendants No. 1 and 2 in favour of defendant No. 3 shall have no effect upon the rights of the plaintiff with regard to the suit property and all the defendants shall do all acts necessary for execution and registration of the sale deed as per terms of the agreement to sell dated 10.4.2008.”

In short, respondent-plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 10.4.2008 executed by respondent Nos. 2 and 3 regarding land measuring 5 kanal 2 marlas out of land measuring 15 kanal 7 marlas, detailed in head note of the plaint. It has been pleaded that date for execution of the sale deed was extended upto 31.12.2009. Prior thereto, respondent Nos. 2 and 3 executed sale deed dated 28.12.2009 in favour of the appellant in respect of land measuring 15 kanal 7 marlas including the land in question, subject matter of the agreement to sell. The respondent-plaintiff had always been ready and willing to get the sale deed executed and registered from respondent Nos. 2 and 3 on payment of balance sale consideration and other expenses, as per terms and conditions of the agreement to sell. Respondent Nos. 2 and 3, real sisters of Lakhwinder Singh son of Shingara Singh wanted to transfer the land in dispute to Lakhwinder Singh and his sons Daljit Singh and Sahib Singh. Respondent-plaintiff orally requested Lakhwinder Singh, husband of the appellant and sons of Lakhwinder Singh not to get the sale deed executed from respondent Nos. 2 and 3 and also presented the agreement to sell before them but they refused to accede to the request of respondent-plaintiff.

Thereafter, he served legal notice through his counsel on 24.12.2009 upon Lakhwinder Singh and his sons intimating them about the agreement to sell executed by respondent Nos. 2 and 3 but despite the said notice, Lakhwinder Singh got the sale deed executed from respondent Nos. 2 and 3 in favour of the appellant, his wife.

Neither the appellant nor respondent Nos. 2 and 3 caused appearance before the trial court and as a consequence, they were proceeded against ex parte.

To prove his case, respondent/plaintiff examined Kewal Krishan, Registration Clerk, PW1, Karaj Singh PW2, Gurnam Singh Document Writer PW4 and himself appeared in the witness box as PW3.

The learned trial court accepted plea of the respondent-plaintiff that he has successfully proved agreement to sell dated 10.4.2008 but negated his claim for possession by way of specific performance as well as relief of permanent injunction on the premise that the respondent-plaintiff failed to prove that he was ready and willing to perform his part of the contract on 31.12.2009. It has further been held that neither it is pleaded nor proved that respondent/plaintiff remained present in the office of Sub Registrar, Ferozepur on the agreed date.

As has been noticed hereinbefore, judgment and decree passed by the trial court were reversed in appeal preferred by unsuccessful respondent-plaintiff. The Court in Appeal has held in para 13, quoted thus:-

“.....it is significant to note that three days prior to the stipulated date for execution of the sale deed, the defendants No. 1 and 2 had executed the sale deed dated 28.12.2009, copy whereof is mark A, in favour of defendant No. 3. The sale deed pertains to the land in dispute along with other land and the sale deed has been executed by defendants No. 1 and 2 alongwith another sister namely Veero. The execution of the sale deed by defendants No. 1 and 2 in favour of defendant No. 3 implies refusal on the part of defendants No. 1 and 2

to perform their part of contract. In such circumstances, the presence of the plaintiff in the office of the Sub Registrar would have been an exercise in futility. Furthermore, there is nothing on record to suggest that defendants No. 1 and 2 had appeared in the office of Sub Registrar on 31.12.2009 for the purpose of execution of the sale deed in favour of the plaintiff. As the defendants No. 1 and 2 had already executed the sale deed in favour of defendant No. 3, in such circumstances, there was no requirement on the part of the plaintiff to appear before the Sub Registrar on the stipulated date for execution of the sale deed. Furthermore, there is categorical averment in the plaint as well as in the deposition of the plaintiff in the Court with regard to his readiness and willingness to perform his part of the contract and the said aspect of the deposition of the plaintiff is unrebutted on record. Furthermore, the plaintiff has instituted the suit on 4.1.2010 i.e. four days after the stipulated date for the execution of the sale deed, which is also indicative of his readiness and willingness to perform his part of the contract. As the defendants No. 1 and 2 have already executed the sale deed in favour of defendant No. 3, there was no justified reason with the plaintiff to serve notice upon them and asking to execute sale deed in his favour. Moreover, the plaintiff has initiated quick action without loss of time in seeking remedy available to him under law. Consequently, the readiness and willingness on the part of the plaintiff to perform his part of the contract is evident on record and he is entitled to the specific performance of the agreement to sell.”

Counsel for the appellant would argue that the appellate court has seriously erred by setting aside the well founded findings recorded by the trial court rejecting plea of the respondent-plaintiff that he always remained ready and

willing to perform his part of the agreement. It is argued that the respondent-plaintiff has neither pleaded nor adduced any evidence that on the stipulated date i.e. 31.12.2009, he had gone to the office of Sub Registrar to perform his part of the agreement i.e. to get the sale deed executed and registered on payment of balance sale consideration as well as expenses of purchase of stamp papers and registration charges etc. It is further argued that the appellant being the subsequent purchaser of the suit land is entitled to raise the question of readiness and willingness of the respondent-plaintiff.

Counsel representing the respondent-plaintiff has supported the judgment passed by the Court in Appeal with the submission that the appellate Court on a detailed consideration of the facts alleged and proved by the respondent-plaintiff has rightly recorded its findings that as respondent Nos. 2 and 3 executed sale deed in favour of the appellant on 28.12.2009, few days before the stipulated date i.e. 31.12.2009, there was no occasion for the respondent-plaintiff to cause appearance in the office of Sub Registrar on the stipulated date for execution of the sale deed. Conversely, the respondent-plaintiff was quite vigilant and he orally as well as through notice requested Lakhwinder Singh and his sons about the agreement to sell in his favour but still the appellant and proforma respondents connived together being close relatives and got executed the sale deed in respect of the suit land in favour of wife of Lakhwinder Singh son of Shingara Singh and Lakhwinder Singh is none else but real brother of Chhindo and Smt. Joginder Kaur, executant of the agreement to sell. Further argued that as the appellant and proforma respondents did not contest the suit, there is no challenge to the averments raised in the plaint as well as in the duly sworn affidavit filed by the respondent-plaintiff reiterating his stand that he always remained ready and willing to perform his part of the agreement since the agreement to sell dated 10.4.2008 was executed. In addition, it is argued that very fact that the respondent-plaintiff instituted the suit on 4.1.2010 just four days after

expiry of the stipulated date i.e. 31.12.2009, conduct of the respondent-plaintiff is a strong telling circumstance to establish his plea with regard to readiness and willingness to perform his part of the agreement.

I have heard counsel for the parties, perused the paper book and the records.

There is no dispute about the settled position in law laid down by Hon'ble the Supreme Court **Azhar Sultana vs. B. Rajamani and others 2009(2) RCR(Civil) 123** and **B. Vijaya Bharathi vs. P.Savitri and others 2018(1) RCR (Civil) 4** that the subsequent purchaser is entitled to contest plea of the proposed vendee under agreement to sell qua readiness and willingness. However, when the judgment of the Court in Appeal is examined in the light of averments made in the plaint coupled with oral and documentary evidence adduced by the respondent-plaintiff alongwith that the appellant and performa respondents did not contest the proceedings before the trial court, there is no option with this Court except to affirm findings recorded by the first appellate court while setting aside findings of the trial court negating plea of the respondent-plaintiff that he always remained ready and willing to perform his part of the agreement. As a matter of fact, the Court in appeal rectified gross error committed by the trial court in the peculiar facts and circumstances that the respondent-plaintiff had even assailed the sale deed dated 28.12.2009 executed by performa respondents in favour of the appellant in the suit which was instituted just after four days w.e.f. 31.12.2009. In this view of the matter, contention raised by counsel for the appellant to assail judgment passed by the Court in Appeal is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is dismissed with costs.

(Rekha Mittal)
Judge

27.3.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

