

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

RSA No.2507 of 2016 (O&M)

Date of Decision:20.11.2018

Raj Singh

...Appellant(s)

Versus

Jatinder Kumar Sangari and others

...Respondent(s)

RSA No1482 of 2016 (O&M)

Suheal Singh Shergill

...Appellant(s)

Versus

Jatinder Kumar Sangari and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.S.Sidhu, Advocate for the appellant in
RSA No.2507 of 2016.
Mr.M.L.Saggar, Sr. Advocate with
Mr.Mohinder Singh, Advocate for the appellant in
RSA No.1482 of 2016.
Mr.Nitin Jain, Advocate for respondent No.1 in
RSA No.1482 of 2016.

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.1482 and 2507 of 2016 filed by two different defendants in a suit for specific performance of the agreement to sell shall stand decided.

The question of law which arises for consideration is “whether on the basis of construction carried out by the defendant-proposed vendor during the pendency of the suit, plaintiff's right to get specific performance of the sale proposed can be defeated?”

The defendants-appellants are in the regular second appeals against the concurrent findings of fact arrived at by the courts below, while decreeing the suit for possession by way of specific performance of the agreement to sell dated 8.9.2003, whereby Plot No.2630, Sector 70, SAS Nagar, Mohali was agreed to be sold for total sale consideration of Rs.28,00,000/-, out of which Rs.3,00,000/- was received as earnest money. The agreement to sell also provides that 15,000 bricks lying on the plot in dispute shall also be a part of the sale consideration. As per agreement to sell, the sale-deed was to be executed and registered on 25.12.2003. The agreement to sell was entered into by defendant No.1 through his general power of attorney holder-defendant No.2. The plaintiff has pleaded that since the defendant failed to obtain no dues as well as no objection certificate from the allotting authority, i.e. defendant No.3, therefore, the date was extended by six days to 31.12.2003 vide writing dated 23.12.2003 and once again extended by 17 days to 15.1.2004 vide writing dated 29.12.2003. The plaintiff has further pleaded that after giving telegram, he got prepared a demand draft in favour of defendant No.2 and went to the office of Sub-Registrar for execution and registration of sale-deed but defendant No.2 did not come present. The plaintiff thereafter got his presence marked by getting an affidavit attested from the Sub Registrar-cum-Executive Magistrate. Thereafter he sent notice on 19.1.2004 to defendant No.2. But since no response was received, therefore, the suit was instituted on 20.2.2004.

Defendant No.1 admitted that he has appointed defendant No.2 as attorney on 14.2.1994. However, he denied about any knowledge of the agreement to sell entered into by defendant No.2. Defendant No.2 filed a

separate written statement, admitting the agreement to sell and receipt of earnest money, however, price of bricks lying in the plot in dispute was not part of the sale consideration.

Another written statement was filed by defendant No.4, who is appellant in the second appeal, claiming he has another previous agreement to sell in his favour dated 15.7.2003.

Both the courts after appreciating the evidence, decreed the suit filed by the plaintiff as noted above.

Learned senior counsel for the appellant, while drawing attention of the Court to the note appended at the end of agreement to sell, submitted that the entire amount was payable on 25.12.2003 and therefore, the agreement to sell has come to an end. The note appended is extracted as under:-

“No dues, NOC etc shall be obtained with the efforts of the purchaser. Final payment shall be made on or before 25.12.03 irrespective of whether NOC is obtained or not. In that case sub GPA and other papers shall be executed.”

However, the learned senior counsel for the appellant did not dispute the correctness of two other writings signed by the parties, i.e. 23.12.2003, extending the date to 31.12.2003 and dated 29.12.2003, extending the date to 15.1.2004. Once the date for execution and registration of sale-deed has been extended, therefore, defendants cannot be permitted to rely upon the original stipulation which made it mandatory for the plaintiff to pay the balance sale consideration on or before 25.12.2003.

Next argument of learned senior counsel for the appellant is to the effect that the Court should exercise its discretion and order only refund of the earnest money along with appropriate rate of interest. He has

submitted that during the pendency of the present suit, defendant No.1 has constructed a house and therefore, specific performance should not be granted. He further submitted that the plaintiff is a builder and therefore the plaintiff is not entitled to specific performance of the agreement to sell. In the alternative, he submitted that the plaintiff be called upon to pay cost of construction. He also submitted that in the affidavit, which was got attested by the plaintiff from the Sub-Registrar-cum-Executive Magistrate, it is nowhere stated that the plaintiff is carrying demand draft of the amount.

As regards argument of learned senior counsel for the appellant that this Court should exercise discretion in favour of the defendant rather than in favour of the plaintiff, it will be noted that the plaintiff filed an application, requesting the court to restrain the defendants from raising the construction. However, the defendants contested the application on the ground that construction has to be raised because otherwise property would be resumed. This Court has gone through the order passed by the trial court on 29.7.2007 passed by the learned trial court, wherein it was ordered that the defendants is permitted to raise construction and effect thereof would be kept in view by the court, while deciding the main case. In such circumstances, the plaintiff cannot be denied relief of specific performance of the agreement to sell only on the ground that during the pendency of the suit, defendant No.1 has raised construction.

The plaintiff-respondent has already made an offer to Rs.15,00,000/- over and above the balance sale consideration towards cost of construction, although, it is being claimed by the appellant that the cost of construction is much more, however, no evidence in this regard has been produced on file. Hence, in view of the statement made by the learned

counsel for the plaintiff-respondent dated 2.12.2017, the decree of the courts below shall stand modified and decree for constructed house is passed on payment of balance sale consideration of Rs.25,00,000/- plus Rs.15,00,000/- towards construction.

Question of law as framed above is answered against the appellant-defendant No.1.

As regards the argument of the learned senior counsel for the appellant that in the affidavit sworn in by the plaintiff for marking his attendance, reference to the draft has not been made, it will be noted that copy of the draft is part of the record got prepared on 15.1.2004 in favour of defendant No.2, hence there cannot be any doubt about the correctness of the assertions.

Learned counsel for the appellant in RSA No.2507 of 2016, who claims another agreement to sell in his favour dated 15.7.2003, has submitted that the findings of the court that agreement dated 15.7.2003 is ante-dated is erroneous. Once Ram Kumar-DW-4, attesting witness of the agreement to sell, has been examined and his submission has been noticed by the court, correctness whereof is not being disputed to the effect that if the agreement to sell dated 15.7.2003 is ante dated, he cannot definitely say that agreement was ante dated. The plaintiff has also failed to examine scribe or vendors of the stamp paper for agreement to sell dated 15.7.2003. In the present case, once there was dispute with regard to the date of execution of the agreement to sell, it was for defendant No.4 to place sufficient evidence on file to prove that the agreement to sell dated 15.7.2003 was extended on that date.

Still further, both the courts have noticed that there are material

contradictions in the evidence of all the witnesses produced by the defendants and it has come in the evidence of defendant No.2 that Satbir Singh, Major Singh and Gurjit Singh are close relatives and they have been meeting each other frequently. Further, undisputedly, defendant No.4-appellant has not filed any suit for specific performance of the agreement to sell in his favour.

Learned counsel for the appellant in RSA No.2507 of 2016, while drawing attention of the court to the order dated 29.7.2013, has submitted that additional issues were framed by the court and on the same day the case was decided. It may be noted that the parties were alive to the facts of the case and they had been granted ample opportunities to lead their evidence. The additional issues were framed only to cull out the points which were required to be determined. Still further, learned counsel for the appellant could not draw attention of the Court to any request made by his counsel, seeking opportunity to lead further evidence. In the present case, the suit remained pending before the learned trial court for a period of more than 9 ½ years. The defendants started their evidence on 1.12.2011 and approximately 13 opportunities were granted to lead evidence.

In view of the above-said discussion, RSA No.2507 of 2016 is hereby dismissed, whereas the judgments passed by the courts below in RSA No.1488 of 2016 stands modified and there will be a decree for possession by way of specific performance of the agreement to sell of the constructed house on payment of balance sale consideration of Rs.25,00,000/- plus cost of construction as offered by the learned counsel for the plaintiff, i.e. Rs.15,00,000/- (total Rs.40,00,000/-) alongwith interest @ 9% from the date of institution of the suit till the deposit in the Court or

payment to the defendant-Suheal Singh Shergill within three months from the date of receipt of a certified copy of this order.

Pending application(s), if any, shall also stand disposed of, in terms thereof.

20.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No