

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

R.S.A.No.2045 of 2015 (O&M)

Date of Decision: January 18, 2018

Devinder Singh

Appellant

Versus

Labh Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Beant Singh Seemar, Advocate,
for the appellant.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit decreed by the trial Court seeking specific performance of the agreement to sell dated 26.5.2003, has been dismissed.

Appellant-plaintiff filed a suit seeking specific performance of the agreement to sell dated 26.5.2003 on the premise that the area agreed to be sold was for ₹2,05,000/- per acre and ₹1,000/- was paid as earnest money. Stipulated date for execution and registration of the sale deed was 19.11.2003. The respondent-defendants instituted a civil suit seeking injunction in July, 2003, but did not plead the agreement to sell. However, the appellant-plaintiff, who was arrayed as a defendant in the said suit, appeared and apprised the Court about the factum of agreement to sell. The aforementioned suit was decreed by the trial Court vide judgment and decree dated 1.9.2006. However, the matter assailed before the Lower

Appellate Court, the decision was rendered in favour of the appellant-plaintiff.

Mr.Beant Singh Seemer, learned counsel for the appellant-plaintiff submits that preceding to the filing of the suit on 30.9.2006, appellant-plaintiff had sent a legal notice 18.10.2003 calling upon the respondent-defendants to perform their part of the agreement. Having failed to do so, since the period was expiring, preferred the aforementioned suit. The respondent-defendants admitted the execution of the agreement to sell, but submitted that the fraud had been played and also submitted that the agreement to sell did not specify any khasra number or any area, but yet on the preponderance of the evidence, the trial Court decreed the suit.

He further submits that the signatures on the agreement to sell are admitted and the witnesses also proved the payment of earnest money of ₹1,000/-, but the Lower Appellate Court abdicated and committed illegality and perversity in dismissing the suit on the premise that the same was barred by law of limitation. He submits that the limitation would commence from 18.10.2003 and the suit was filed on 30.9.2006. Even the target date was 19.11.2003 and by taking the period of three years limitation, the suit was within time, i.e., three years from the date of accrual of the cause of action and, thus, urges this Court for setting-aside the judgment and decree of the Lower Appellate Court.

He also submits that there was a specific pleading in the plaint that the appellant-plaintiff had been approaching the respondent-defendants from the date of the execution of the agreement to sell till 2004 for execution of the sale deed and also appeared before the Sub Registrar for the said purpose. Even the ingredients of Section 63-C of the Specific Relief

Act were proved to the hilt. All these factors have not been examined in correct perspective by the Lower Appellate Court and, therefore, there is illegality and perversity.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-plaintiff.

The law regarding readiness and willingness is no longer *res integra*. The Hon'ble Supreme Court in **Sita Ram & Ors. Versus Radhey Shyam, 2007(4) R.C.R. (Civil) 533** has clearly laid down the law that the readiness and willingness has to be from the date of the execution of the agreement to sell, during its currency, till the filing of the suit and during the pendency of the suit.

From the emanated facts, it is deciphered that the appellant-plaintiff has to be ready and willing from the date of the execution, during its currency, till the filing of the suit and during the pendency of the suit. *Prima-facie*, a legal notice was sent on 18.10.2003, wherein the respondent-defendants were called upon to appear on 19.11.2003 to comply with the terms and conditions of the agreement to sell and the appellant-plaintiff, though, had appeared but the respondent-defendants did not turn up, whereas the suit was filed on 30.9.2006. There is no explanation except a passing reference that there was some correction in the revenue record in 2005. Still, for two years, the appellant-plaintiff was in slumber. In my view, the readiness and willingness was conspicuously absent.

Filing of the suit for injunction by the respondent-defendants as plaintiffs against the appellant-plaintiff being defendant was a breach of agreement to sell, which gave a cause of action to the appellant-plaintiff for instituting the

suit. The appellant-plaintiff contested the suit, but did not avail remedy or file any counter-claim as per the Specific Relief Act. All these factors have been examined and taken into consideration by the Lower Appellate Court. In my view, the judgment and decree of the Lower Appellate Court do not call for any interference as the appellant-plaintiff has failed to prove the continuous readiness and willingness. He has even lost the right to recover the earnest money. The breach had occurred in 2003, whereas the suit was filed on 30.9.2006 beyond two years.

As an upshot of my above observations, no ground for interference in the findings of the Lower Appellate Court is made out. Even no substantial question of law arises for determination by this Court. Resultantly, the appeal is dismissed.

January 18, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No