

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

RSA No.4059 of 2016 (O&M)

Date of decision : 11.09.2018

Gopal Krishan

...Appellant

Versus

Swaran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate for the appellant.

Mr. Ajay Pal Singh, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing his suit for possession by way of specific performance of the agreement to sell dated 11.01.2017.

Only dispute between the parties is whether the plaintiff was always ready and willing to perform his part of the contract or not. It may be mentioned that the agreement to sell dated 11.01.2007 and receipt of earnest money of ₹6,00,000/- is not disputed.

The defendants have taken a stand that the plaintiff was not ready with the balance payment and since he was close to the Sub-Registrar, who is the actual purchaser of the property, therefore, the evidence has been created to show that the plaintiff was present.

It is not disputed that as per the agreement to sell, sale deed was to be executed and registered upto 05.05.2007. The plaintiff claims that he orally informed the defendants and remained present on 04.05.2007 and moved an

application and got his attendance marked before the Sub-Registrar. However, the Courts have found that the defendants gave notice to the plaintiff to remain present on 07.05.2007 as 05.05.2007 and 06.05.2007 were holidays.

The Courts have further found that the defendants remained present on 07.05.2007 from 10:00 AM to 5:00 PM and thereafter they got their affidavit attested from the Sub-Registrar which was entered at Sr. No.71.

The Courts have further found that the affidavit and the application which was got attested by the plaintiff on 07.05.2007 entered at Sr. No.74 is in fact result of collusion with the Sub-Registrar. Still further, both the Courts have found that the plaintiff failed to show and prove that he was ready with the balance sale consideration which is over ₹15,00,000/-. Although, plaintiff claims that he has received ₹7,00,000/- as earnest money by executing the agreement to sell with respect to sale of a house in which he is residing, with Sunil Kumar, however, the aforesaid fact has not been proved as Sunil Kumar has not been examined. The plaintiff when appeared in evidence, has submitted that he was having credit balance of ₹18,00,000/- with the State Bank of India, Branch D.C. Office, however, he admits that he had not withdrawn any amount from the aforesaid account.

In view of the aforesaid position, when plaintiff is concurrently proved to be not in possession of the sufficient resources on the day how he can be said to have come and ready for the execution and registration of the sale deed.

Learned counsel appearing for the appellant while drawing the attention of the Court to Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, applications and affidavits of the plaintiff attested before the Sub-Registrar on 04.05.2007 and 07.05.2007, has submitted that the plaintiff is proved to be ready and willing to

perform his part of the contract. However, mere moving of an application or attestation of the affidavit is not sufficient to prove the readiness and willingness. As noticed above, more than ₹15,00,000/- was payable. The plaintiff has failed to prove that he was in possession of more than ₹15,00,000/-, payable to the defendants as well as the stamp duty and registration charges. Once the plaintiff has failed to prove that, this Court does not find any error in the judgment passed by both the Courts below.

Still further, it may be noticed that after 07.05.2007, the date according to which the plaintiff was ready and willing to perform his part of the contract, the plaintiff did not take any step and did not even call upon the defendants by issuing any notice asserting that he was ready and willing to perform his part of the contract and had come to the Office of Sub-Registrar with the balance sale consideration. The suit was filed after a period of 9 months. That itself proves in the facts of the present case that the plaintiff was not in possession of sufficient resources to honour the agreement and, therefore, he was not always ready and willing to perform his part of the contract.

In view of the aforesaid discussion, this court finds no reason to interfere with the concurrent findings of fact.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No