

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

Regular Second Appeal No. 3589 of 2015(O&M)

Date of Decision: September 20 , 2018.

Ashok Kumar

..... APPELLANT (s)

Versus

Sidharth Gupta

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vishal Aggarwal, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant/defendant is aggrieved of judgments and decrees dated 04.09.2013 and 18.02.2015 passed by the learned Additional Civil Judge (Senior Division), Pathankot and the learned District Judge, Pathankot, respectively, to the extent that the plaintiff/respondent has been held entitled to recovery of ₹1,50,000/- alongwith interest at the rate of 8% from the date of filing of the suit till its realization.

Brief facts necessary for adjudication of the case are that, the plaintiff/respondent filed a suit for possession by way of specific performance of the agreement/agreements dated 31.01.2005, 18.11.2005 and 19.11.2005 for sale

of land measuring 10 Kanal 13 Marlas as detailed in the plaint. It was pleaded that the appellant/defendant was the owner of the suit land. He agreed to sell the suit land to the respondent/plaintiff at the rate of ₹5,800/- per marla on 31.01.2005 by way of an oral agreement. Sum of ₹1,00,000/- was received by the defendant and a receipt dated 31.01.2005 (Ex.P1) was executed by him. It was orally agreed that the sale-deed would be executed after the settlement regarding separation of share of the present appellant/defendant and sanction of mutation thereof. It was further pleaded that the appellant/defendant undertook to execute the sale-deed within one year. Another sum of ₹40,000/- was received by the defendant/appellant on 18.11.2005, besides, ₹10,000/- on 19.11.2005 i.e., a total sum of ₹1,50,000/- towards the earnest money was stated to have been given by the plaintiff to the defendant/appellant. It was further undertaken by the appellant/defendant that the sale-deed would be executed after formal partition and sanction of mutation. Plaintiff kept inquiring from the defendant about the status of the partition and requested him to execute the sale-deed. The plaintiff was surprised to receive a notice dated 14.07.2006 from the appellant/defendant vide which the plaintiff was called upon for execution of the sale-deed for the land measuring 10 Kanals out of the land measuring 124 Kanals 16 Marlas bearing Khasra No.3181/2524/2268. Fifteen days were given to get the sale-deed executed. The plaintiff replied to the notice while stating that the land mentioned in the notice is 'Gair mumkin' chakki river, the price of which is hardly ₹400/- per marla. Reply to the said notice was given to the appellant/defendant asking him for execution of the sale-deed of the land in question on 31.07.2006. The present appellant/defendant confirmed for execution of the sale-deed on 31.07.2006 by

sending a telegram. The plaintiff/respondent pleaded that he remained present in the office of Sub Registrar, Pathankot on 31.07.2006 with balance amount, but the appellant/defendant did not turn up to execute the sale-deed. The plaintiff got his presence marked vide an affidavit. Despite request, sale-deed was not executed by the defendant. Hence, the suit was filed.

The present appellant/defendant resisted the suit while pleading in the written statement that the agreement in question is not executable being vague. Moreover, the plaintiff allegedly concealed material facts. The plaintiff was alleged to be a property dealer and had a customer who was interested in setting up a crusher. Land belonging to the appellant/defendant in the Khasra number as mentioned in the written statement was identified for purchase. Plaintiff was to get the sale-deed executed within a period of six months after paying the balance sale consideration. However, after the lapse of six months on 31.07.2005 when the plaintiff failed to execute the sale-deed by paying the balance amount, the appellant/defendant approached the plaintiff. Further sums of ₹40,000/- and ₹10,000/- were paid on 18.11.2005 and 19.11.2005, respectively, to the defendant. Time for execution and registration of the sale-deed was extended upto 31.01.2006, but still the plaintiff did not execute the sale-deed. It was specifically pleaded that the plaintiff was trying to manipulate the agreement to sell to deprive the defendant of land which is valued at ₹20,000/- to 25,000/- per marla and seeks execution of the such land which was never agreed to be sold by the defendant. Dismissal of the suit was prayed for.

From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether the plaintiff is entitled for possession by way of specific performance of agreement dated 31.1.2005? OPP
2. Whether plaintiff is remained ready and willing and still ready and willing to perform his part of contract? OPP
3. Whether plaintiff is entitled for recovery of Rs.5,00,000/- alongwith interest as an alternative relief? OPP
4. Whether suit of the plaintiff is not maintainable in the present form? OPD
5. Whether suit is liable to be dismissed with special cost? OPD
6. Relief

The learned trial court held that the alleged oral agreement was not executable, therefore, relief of specific performance of the agreement was declined, while holding that the plaintiff was entitled to recovery of a sum of ₹1,50,000/- alongwith interest at the rate of 8%.

The appellant/defendant filed an appeal which was dismissed by the learned District Judge, Pathankot vide judgment and decree dated 18.02.2015. Aggrieved therefrom, the present appeal has been filed by the appellant/defendant.

Learned counsel for the appellant vehemently argues that both the learned courts below have wrongly directed recovery of ₹1,50,000/- alongwith interest at the rate of 8%. It is contended that it is the appellant-defendant, who issued notice dated 14.06.2006 (Ex.P-4) asking the plaintiff-respondent to execute the agreement which was arrived at between the parties on 31.01.2005. It is submitted that the same was an oral agreement to sell the land measuring 10 Kanals at the rate of ₹5800/- per marla. It is wrongly held by both the learned Courts below that identity of the land in question is not determined. PW-3- Karnail Singh, a witness of the plaintiff himself has clearly stated in his cross-examination that the land in question was the one near Chakki river. Moreover,

readiness and willingness of the plaintiffs to carry out the terms and conditions of the agreement have not been proved on record. In this respect, reference is made to Ex.P-9, affidavit dated 31.07.2006 executed by the plaintiff while alleging that he was present for execution of the sale deed, but the present appellant did not come present. It is submitted that no details regarding the consideration/balance consideration or the expenses to be incurred has been mentioned in the said affidavit. As per Section 16 of the Specific Relief Act, it was incumbent upon the plaintiff to not only clearly and specifically aver but also prove his readiness and willingness to execute the agreement in question. Once that has not been done, there is no question of directing recovery of the amount in question. It should automatically stand forfeited. It is thus prayed that the present appeal be allowed. Direction regarding entitlement of the plaintiff/respondent to the recovery of the amount of ₹1,50,000/- be also set aside.

I have heard learned counsel for the appellant and have gone through the requisitioned record with his able assistance.

It is not denied that the terms and conditions of the agreement regarding sale of the land in question were not reduced into writing. It is only a receipt (Ex.P1) which is stated to have been executed by the present appellant/defendant. The same reads as under:-

“Received Rs.One Lac (1,00,000/- from Sh. Sidharath Gupta against land approximate 10K at @Rs.5800/- per marla”

Receipt of the amount of ₹1,50,000/- i.e., ₹1,00,000/- on 31.1.2005, ₹40,000/- on 18.11.2005 and ₹10,000/- on 19.11.2005 is admitted by the appellant. The case set up by the appellant/defendant is that he agreed to sell only

the land which is admittedly situated in the river bed whereas the plaintiff contended that the land agreed to be sold was different. It is a matter of record that nature and description of the land is not available on any of the receipts (Ex.P1 to P3). As per the jamabandi for the year 2004-05 (Ex.P16 and PX), the appellant/defendant is the owner of two chunks of land in the same village. There is indeed nothing on record to show the specific parcel of land sought to be purchased by the plaintiff/respondent. In this view of the matter, both the learned courts below have rightly held that such an agreement cannot be executed.

Much stress has been laid by learned counsel for the appellant to urge that once the defendant/appellant took the initiative to serve a notice upon the plaintiff, there was no question of directing the recovery of the amount in question from him keeping in view the fact that it was the plaintiff who was not ready and willing to execute the agreement. His readiness and willingness to perform his part of the agreement is not reflected from the evidence on record. However, a perusal of the record reflects that this argument on behalf of the appellant is not substantiated. In response to the telegram (Ex.D2) sent by the appellant/defendant, the plaintiff had come present for the execution of the sale-deed. As per the affidavit (Ex.P9) executed by the plaintiff, he was present at the Tehsil complex alongwith the balance amount as well as the expenses to be incurred. Argument on behalf of the appellant that non-mentioning of the exact balance amount and the expenses is fatal to the case of the plaintiff as his readiness and willingness to perform his part of the contract is not reflected, is untenable, hence rejected. The appellant/defendant has clearly admitted receipt of ₹1,50,000/- from the plaintiff as earnest money for sale of ten kanals of land.

There is nothing on record that proves the agreement to sell in respect of a particular parcel of land. Therefore, the learned courts below have rightly directed recovery of the sum of ₹1,50,000/- alongwith interest at the rate of 8% from the appellant/defendant.

No other argument has been raised.

Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record. Learned counsel for the appellants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 04.09.2013 and 18.02.2015 passed by the learned Additional Civil Judge(Senior Division), Pathankot and the learned District Judge, Pathankot, respectively, which warrant any interference by this Court.

There is a delay of 14 days in filing of the appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

(LISA GILL)
JUDGE

September 20 , 2018.
'om'

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