

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

RSA No.118 of 2014 (O&M)

Date of Order:05.02.2018

Ravinder Kumar and others

..Appellants

Versus

Smt. Pushpa and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jain, Sr. Advocate, with
Mr. Ravi Kadian, Advocate,
for the appellants.

Mr. Gurinder Pal Singh, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

In morning session, detailed arguments of learned counsel representing the parties were heard and order was pronounced. Now, this Court proceeds to record reasons.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for specific performance of the agreement to sell dated 20.05.2004.

Execution of the agreement to sell is admitted. It is the case of the plaintiffs that Rs.1,00,000/- was paid as earnest money, whereas it is the case of the defendants that Rs.70,000/- was paid.

The main dispute between the parties is whether the date for execution and registration of the sale deed was 15.04.005 or 15.11.2004.

Learned senior counsel for the appellants has vehemently argued that the agreement has been interpolated and, therefore, rendered unenforceable. He has also submitted that as per the agreement to sell, the date for execution and registration of the sale deed was 15.11.2004 and

there is no evidence that the plaintiffs were ready and willing to perform their part of the contract on 15.11.2004. He has further submitted that discretion exercised by the Court to grant specific performance of the agreement to sell is arbitrary.

A photocopy of the agreement to sell has been produced before the Court. A look at the photocopy of the agreement to sell establishes that there are two additions/alterations in the agreement to sell originally typed. Both the additions/alterations are duly signed by the defendant-appellant. Raja Ram has not even dared to deny their signatures on additions/alterations when confronted with during cross-examination.

Here is a case where late Sh. Raja Ram had entered into an agreement to sell with daughters of his brother as he had shifted to Rajasthan. He had received Rs.1,00,000/- as earnest money but, thereafter refused to honour the agreement to sell.

As noticed above, execution and registration of the agreement to sell is not being disputed. Once Raja Ram, executant of the agreement to sell has not dared to deny his signatures, when confronted during cross-examination on the cutting and addition in the agreement to sell, this Court does not find any error in the judgment of the learned courts below.

Second argument of learned counsel is that the plaintiffs are not proved to be ready and willing to perform their part of the contract. This court has already found that the target date for execution and registration of the sale deed was 15.04.2005 as written in the agreement to sell after erasing 15.11.2004. Plaintiffs filed the present suit on 29.04.2005 i.e. after a period of 14 days from the target date. On 15.04.2005, plaintiffs visited the office of Sub-Registrar and got the affidavit attested. In fact, late Sh.

Raja Ram had transferred the property in favour of his own daughter-defendant no.2 vide sale deed dated 10.03.2005. It is obvious that late Sh. Raja Ram was not ready to honour the agreement to sell. Plaintiffs have also asserted that the plaintiffs were always ready and willing to perform their part of the contract. Even in the evidence, plaintiffs have stated that they were always ready and willing to perform their part of the contract. Plaintiff no.2 herself has appeared in the witness box. Hence, this Court does not find any substance in the argument of learned senior counsel for the appellants.

Last submission of learned counsel is that the courts below have granted the decree for specific performance in a mechanical manner. He has submitted that the courts have failed to exercise its discretion.

This court has considered the submission. As per Section 20 of the Specific Relief Act, 1963 the passing of a decree for specific performance is discretionary. However, the discretion to be exercised is guided by judicial principles and depends upon sound and reasonable reasoning. In the agreement to sell, it has been mentioned that late Sh. Raja Ram requires the amount of sale consideration for his own need. Defendants-appellants have failed to bring any fact to the notice of the Court which dis-entitles the plaintiffs from the decree for specific performance of the agreement to sell.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

February 05, 2018
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(ANIL KSHETARPAL)
JUDGE

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