

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

RSA No.5420 of 2016 (O&M)

Date of Decision: September 05, 2018

Rajiv Kumar

...Appellant

Versus

Madan Lal

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajesh Kumar Girdhar, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal impugning the judgments of the courts below, whereby, the suit for recovery filed by the plaintiff – respondent has been decreed.

The plaintiff instituted the suit for recovery of Rs.9,10,000/- i.e. Rs.7,00,000/- paid as earnest money and Rs.2,10,000/- as interest thereon, calculated @ 18% per annum from the defendant. It was pleaded that the defendant vide agreement to sell dated 29.3.2012 had agreed to sell land measuring 32 Marlas comprised in Rect. No.94, Killa No.14/1 situated at Jalalabad, District Fazilka to the plaintiff. He received a sum of Rs.7 lacs as earnest money at the time of the execution of the agreement to sell. The date for registration of the sale deed was 7.7.2012. 7.7.2012 happened to be a Saturday and 8.7.2012 being Sunday, the plaintiff on 9.7.2012 went to the office of Sub-Registrar, Jalalabad along with remaining sale consideration and the requisite amount for expenses of registration. Though, he waited the

whole day, but the defendant did not turn up. The plaintiff swore an affidavit and got the same attested from a Notary. The plaintiff requested the defendant a number of times, to perform his part of the contract, but to no avail. Hence, the suit.

The case of the defendant was that the plaintiff was engaged in the sale/purchase of property for monetary benefits. The defendant was only a prospective vendee of the land subject to the agreement to sell. This fact was in the knowledge of the plaintiff, as it was specifically mentioned in the agreement to sell. The plaintiff had entered the agreement to sell solely with a view to earn monetary benefits. As he failed to find a buyer for the suit land and arrange the balance sale consideration, the plaintiff defaulted in performing his part of the agreement. The agreement consequently stood cancelled and earnest money forfeited. It was pleaded that Manpreet Singh, Balbir Singh and Gurcharan Singh were owners in possession of the suit land. They had entered into an agreement to sell in favour of one Raman Kumar s/o Baldev Raj, who in turn entered into an agreement with one Vinod Kumar s/o Bhagwan Dass. The latter had entered into an agreement with the defendant and thereafter, the defendant entered into the agreement with the plaintiff. The owners of the suit land were still ready and willing to execute and get registered the sale-deed in favour of the plaintiff, but the plaintiff has backed out from the contract.

In order to substantiate his claim, the plaintiff examined himself as PW1, Surinder Bajaj Advocate-cum-Notary as PW2, Sanjeev Kumar Makkar as PW3, Rakesh Kumar Sikri as PW4 and Sunny-clerk as PW5.

The defendant examined himself as DW1, Gurcharan Singh as

DW2, Manpreet Singh as DW3, Balvir Singh as DW4 and Raman Kumar as DW5.

The plaintiff deposed in terms of the plaint. PW2 Surender Bajaj, Notary, Jalalabad stated that he attested the affidavit of presence dated 9.7.2012 of the plaintiff. He tendered an attested photocopy of the relevant entry of his Register Ex.P3. PW3 Sanjeev Kumar Makkar deposed that plaintiff had requested for financial assistance of Rs.5 lacs for a short period as he was to get executed and registered a sale-deed in his favour. On 7.7.2012, he gave a sum of Rs.5 lacs to the plaintiff. On 9.7.2012, the plaintiff went to the office of sub-Registrar Jalalabad along with the balance sale consideration and requisite registration expenses for execution of the sale-deed, but the defendant did not turn up. He proved his signatures on affidavit Ex.P2 as an attesting witness.

DW1 Rajiv Kumar, the defendant, DW2 Gurcharan Singh, DW3 Manpreet Singh, DW4 Balbir Singh and DW5 Raman Kumar deposed that Gurcharan Singh (DW2), Manpreet Singh (DW3) and Balbir Singh (DW4) are owners in possession of the suit land. Gurcharan Singh, Manpreet Singh and Balbir Singh executed an agreement for sale dated 29.3.2012 (Ex.D2) respecting the suit land in favour of Raman Kumar (PW5). Raman Kumar entered into an agreement for sale dated 29.3.2012 (Ex.D6) with Vinod Kumar son of Bhagwan Dass, who in turn entered into an agreement to sell with the defendant. Gurcharan Singh and others, the owners of the suit land have always been ready and still were ready and willing to execute and get the sale-deed registered in favour of the plaintiff, but the plaintiff himself

The agreement to sell having been admitted, the only question before the Court was regarding the readiness and willingness of the parties to perform their part of the contract. On the basis of the evidence, which established that on the stipulated date, the plaintiff along with the balance sale consideration and requisite expenses for registration, attended the office of the sub-Registrar, the Trial Court held that the plaintiff has been able to prove that he was ready and willing to perform his part of the contract. The defendants, though claiming to be also ready and willing to perform their part of the contract, had not been able to establish this claim. Neither did they claim to be present before the sub-Registrar on the date fixed for execution of the sale-deed, nor was there any evidence on record to show that on the stipulated date or the next working day, the defendant himself or the original owners Gurcharan Singh, Manpreet Singh and Balbir Singh attended the office of sub-Registrar, Jalalabad to perform their part of the contract.

Considering that the defendant was not the owner of the suit land on the date of the agreement to sell, which position continued till the decision of the suit, the Ld. Trial Court held that the plaintiff could not seek specific performance of the agreement to sell. His only remedy was to seek refund of the money paid by him as earnest money. Accordingly, the suit was decreed. The plaintiff was held entitled to recovery of Rs.7,00,000/- along with the interest at the rate of 12% per annum from 7.7.2012 to the date of the decree and the further interest @ 6% per annum on the principal sum adjudged from the date of the decree to the date of payment.

The Ld. Lower Appellate Court affirmed the findings of the Trial

Court.

Findings of fact have been recorded by the courts. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

September 05, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No