

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

RSA No.5453 of 2016 (O&M)

Date of Decision: 14.08.2018

Raghbir

... Appellant

Versus

Ramavtar (deceased) through LR's

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. J.P.Sharma, Advocate,
for the appellant.

Mr. S.K.Yadav, Advocate,
for the caveator-respondents.

TEJINDER SINGH DHINDSA, J.

A suit for specific performance filed by the plaintiffs on the strength of an agreement to sell dated 16.09.2006 pertaining to the suit property was decreed by the trial Court on 26.02.2014. Civil appeal preferred by the defendant has been dismissed vide decision dated 02.04.2016 passed by the learned Additional District Judge, Narnaul and thereby affirming the judgment and decree of the trial Court. Resultantly, defendant/appellant is in second appeal before this Court.

Suit was filed by the plaintiff/respondents herein on the pleadings that an agreement to sell dated 16.09.2006 had been entered into with the vendor (appellant herein) with regard to the suit property for a total sale consideration amount of Rs.3,75,000/- and Rs.1 lakh was paid as earnest money. The date for execution of the sale deed was fixed as 15.03.2007. On 15.03.2007,

plaintiff/respondents remained present in the office of the Sub Registrar concerned along with the balance sale consideration amount for execution of the sale deed but the defendant did not appear. The legal notice dated 22.03.2007 was stated to have been issued calling upon the vendor to appear in the office of Sub Registrar, Narnaul on 06.04.2007 for execution of the sale deed. On 06.04.2007, the plaintiff/respondents again remained present in the office of the Sub Registrar but the defendant did not appear. Accordingly, suit for specific performance of the agreement to sell dated 16.09.2006 was instituted.

Suit was contested by the defendant taking a stand that a forged and fabricated agreement to sell dated 16.09.2006 has been set up. It was stated that the defendant was habitual of drinking alcohol and taking advantage of such bad habit, the plaintiffs have set up the agreement to sell by playing a fraud upon him.

As has been noticed hereinabove, suit of the plaintiff/respondents stands decreed by the trial Court and such judgment has been affirmed by the Lower Appellate Court.

Learned counsel representing the appellant has raised a two fold submission. It is argued that the Courts below have not taken into account a release deed that had been executed by the appellant in favour of his own children pertaining to the suit property. In furtherance of such submission, it is contended that in the peculiar facts and circumstances, the Courts below ought to have exercised the discretion in granting in favour of the

plaintiff/respondents the alternate relief of refund of earnest money rather than decreeing the suit for the main relief of the specific performance of the contract.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal.

Concurrent finding has been recorded by the Courts below on due appreciation of evidence as regard execution of the agreement to sell dated 16.09.2006, Ex.P-1. Plaintiff has examined the marginal witnesses as also deed writer PW-1 Prahalad and PW-6 Ramanand Sharma and who had deposed in favour of the plaintiff's version and stated that contents of the agreement to sell had been rightfully explained to both the parties and only thereafter signatures of the parties had been affixed in the presence of attesting witness. Bishambar Dayal who also appeared and corroborated such version. PW-1 Prahalad also deposed that the defendant/appellant Raghubir had received Rs.1 lakh in cash in his presence.

The plaintiff/respondents i.e.vendees have duly proved the readiness and willingness to perform their part of the contract. The target date for the execution of the sale deed has been fixed as 15.03.2007. The plaintiff/respondents had remained present in the office of the Sub Registrar on the date in question i.e. 15.03.2007 and had even got their presence marked. It was the appellant who did not come present on such date. Thereafter, a legal notice dated 22.03.2007 was issued by the

plaintiff/respondents calling upon the appellant to appear in the office of the Sub Registrar, Narnaul on 06.04.2007 for execution of the sale deed. On such date also the plaintiff/respondents remained present in the office of the Sub Registrar but the defendant/appellant did not appear. The suit was instituted soon thereafter on 12.04.2007 without any delay. The narration of facts hereinabove would clearly indicate the readiness and willingness of the plaintiff/respondents for performance of their part of the contract.

It is a case where the defendant/appellant is not specifically denying his signatures on the agreement to sell dated 16.09.2006. He was setting up a plea of fraud having been committed upon him and the plaintiff/respondents having taken advantage of his bad habit of intoxication. Under such circumstances, onus was on the defendant/appellant to have led evidence to substantiate the plea of fraud with regard to for setting up the agreement to sell dated 16.09.2006. Appellant herein has failed to discharge such onus.

The submission raised by counsel with regard to release deed having been executed by the appellant pertaining to the suit land in favour of his own children is without any consequence. Such alleged release deed was during the pendency of the lis between the parties and as such could not impinge upon the rights of the vendee keeping in view the principle of lis pendens.

It may also be noted that counsel for the appellant

during the course of hearing has stated that the decree of specific performance already stands satisfied inasmuch as the balance sale consideration had been deposited by the vendee before the Executing Court and the sale deed qua the suit land already stands registered.

In view of the discussion above, no basis for interference is warranted.

The judgments passed by the Courts below granting relief of specific performance in favour of the plaintiff/respondents are based on cogent and valid reasoning and upon due appreciation of evidence adduced on record.

There is no merit in the appeal and the same is dismissed.

Pending application(s), if any, shall also stand disposed of.

14.08.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No