

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

**R.S.A. No.6808 of 2016 (O&M)
Date of decision : January 10, 2018**

Shri Daljinder Singh

..... Appellant

Versus

Sh. Chattar Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjeev Manhas, Advocate for the petitioner.

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

KULDIP SINGH J. (ORAL)

Heard.

Impugned in the present regular second appeal is the judgment dated 18.07.2016 passed by learned Addl. District Judge, Amritsar, reversing the judgment and decree dated 11.07.2013 passed by learned Addl. Civil Judge (Sr. Divn.), Amritsar and dismissing the suit of the present petitioner for specific performance of the agreement of sale dated 06.02.2008.

The brief facts of the case are that on 06.02.2008, defendant entered into an agreement of sale of one double storeyed house built on plot No.18 bearing khasra No.7312/2095/5 min having dimensions 40 ft x 24 ft from front side and 24.4 ft from backside, total measuring 107.5 sq. yards with the plaintiff and his nephew Harjit Singh for a total consideration amounting to ₹10,70,000/- and ₹1,00,000/- was paid as earnest money and remaining amount was agreed to be paid on 31.05.2008, on which date sale

deed was to be executed. It is claimed that defendant had mortgaged the property with bank and the said mortgage was to be redeemed from the bank by 20.05.2008 after returning the loan amount. The plaintiff approached the defendant with ₹2,50,000/- to get the property redeemed but he avoided the same. The defendant did not come forward to execute the sale deed on 31.05.2008. As 31.05.2008 and 01.06.2008 were holidays, therefore, the plaintiff appeared before the office of Sub Registrar on 02.06.2008 for getting the sale deed executed but the defendant did not come forward. The plaintiff thereafter, served a legal notice and filed the suit.

The stand of the defendant in the written statement is that the agreement dated 06.02.2008 with the plaintiff was denied. It was stated that plaintiff and his co-sharer Harjit Singh through Jonginder Singh paid the commission for the deal in question. It was further stated that it was stipulated that the loan of ₹2,50,000/- is to be paid by the defendant to the bank to enable him to get back the original sale deed. The said amount of ₹2,50,000/- was not paid on the agreed date i.e. on 20.05.2008. As such, the agreement stood rescinded. The defendant further claimed that in order to clear the loan, he has to sell his accommodation situated at Krishna Nagar, Tarn Taran Road, Amritsar at a much lower price. The defendant also had to pay the interest to the bank.

From the pleadings, following issues were framed:

- “1. Whether the present suit is not maintainable in the present form?OPD*
- 2. Whether the plaintiff is estopped from filing the present suit because of his own act and conduct?OPD*
- 3. Whether the defendant had agreed with*

plaintiff that he would get the property in question redeemed from the bank after returning the loan amount by 20.5.08?OPP

4. Whether the plaintiff always remained ready and willing to perform his part of contract regarding agreement to sell dated 6.2.08?OPP

5. Whether plaintiff alongwith Harjit Singh is guilty of breach of agreement to sell dated 6.2.08?OPD

6. Whether the plaintiff is entitled for relief of possession by way of specific performance of agreement to sell dated 6.2.08 as prayed for?OPP.

7. Whether the plaintiff is entitled of relief of permanent injunction as prayed for?OPP

8. Relief.”

The lower court after recording the evidence and hearing both the parties decreed the suit for specific performance. However, the judgment and decree was reversed in appeal.

A perusal of the judgment of lower appellate court shows that the judgment and decree was reversed mainly on two grounds. One is material alteration in the agreement and the second is that the plaintiff was not ready and willing to perform his part of the contract.

A perusal of the original file shows that the findings of the lower appellate court are correct to the effect that in the agreement, the name of co-purchaser Harjit Singh was scored off. Though the said cutting bears signatures of Harjit Singh but since it was bilateral agreement, the lower appellate court found that it was without the consent of the defendant-seller. Therefore, there was material alteration in the agreement.

A perusal of the agreement shows that cutting is there and there is nothing on the agreement to show that the consent of the defendant-seller was obtained while removing the name of Harjit Singh as co-vendee. As per case of the defendant, ₹2,50,000/- were to be paid by 20.05.2008 to enable him to redeem mortgage with bank and obtain the original title deed to enable him to execute the sale deed. The stand of the plaintiff is that he was ready to pay the said amount. However, defendant has claimed that despite his repeated demands, the said amount was not paid. Therefore, he was unable to redeem mortgage and obtain the original title deed.

The lower appellate court has discussed in detail that the plaintiff had applied for loan from LIC for purchase of the property. The said loan was not sanctioned before 20.05.2008. Therefore, the plaintiff was unable to pay ₹2,50,000/-. It also comes out that both the parties had appeared before the Sub Registrar on 02.06.2008. The lower appellate court has also found that according to the plaintiff, Harjit Singh, co-purchaser had gone to foreign country but Harjit Singh while appearing as PW4 had different story to tell. Harjit Singh had claimed that he had never gone abroad and also claimed that he had signed the application for getting his presence marked. It is also found that after the date fixed for the sale, it was defendant, who issued notice on 11.06.2018.

Learned counsel for the appellant has prayed that relief for refund of the earnest money should be granted.

Since there are material alterations in the agreement and the findings are recorded that the plaintiff was not ready and willing to perform his part of contract, therefore, the earnest money stands forfeited and the

said prayer of the appellant is declined.

In these circumstances, there is no ground to interfere in the findings recorded by the lower appellate court. There is no ground to interfere in the well reasoned judgment of the lower appellate court.

In view of the aforesaid, the regular second appeal stands dismissed.

(KULDIP SINGH)
JUDGE

January 10, 2018
sarita

Whether speaking / reasoned	Yes
Whether Reportable:	No