

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.1024 of 2018 (O&M)
Date of decision: 13.11.2018

Rajinder Kumar Aggarwal

..... Appellant

Versus

Sunita Sharma (Modgil) since deceased
through her husband Satish Kumar Modgil

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aayush Gupta, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for specific performance of the agreement to sell dated 14.07.2003 with a consequential relief of permanent injunction.

The execution of the agreement to sell and receipt of earnest money as also additional amount is not disputed by the appellant. The husband of the plaintiff is co-owner in the property in dispute and 40 sq. yards additional area was sought to be purchased through the agreement to sell dated 14.07.2003. As per the agreement to sell, the sale deed was to be executed and registered on 30.01.2004 when the plaintiff visited the office of the Sub-Registrar and showed his readiness and willingness to perform his part of the contract. It has come on record that the property in dispute was mortgaged with Oriental Bank of Commerce and the defendant did not pay off the loan and get the property redeemed till November, 2004. Various communications were exchanged between the parties extending the target date for execution and registration of the sale deed. There was another dispute between the parties

with regard to the payment of arrears of house tax since 1997. The defendant-appellant was insisting that the plaintiff must pay the arrears of house tax with respect to 3/4th share although, husband of the plaintiff was only owner of 1/4th share. The last notice sent by the defendant is dated 21.10.2005 and the suit was filed on 14.02.2006. On appreciation of evidence, both the Courts have exercised their discretion and decreed the suit after returning a finding that the defendant was at fault as he had neither got the property transferred in his name nor got the property redeemed from the mortgage before the target date for execution of the sale deed. Both the Courts have held that the time was not treated as essence of the contract by the defendant.

Learned counsel for the appellant with all the vehemence at his command has submitted that there was no communication from the plaintiff for a period of one year and therefore, the plaintiff was never ready and willing to perform his part of the contract. This Court has examined the notices exchanged between the parties and it has come on record that the defendant was insisting that the plaintiff must pay 3/4th arrears of house tax for a period of seven years. The dispute between the parties remained pending which resulted into delay in filing of the suit. However, the suit was filed within limitation. The communication between the parties clearly prove that the conduct of the defendant was not fair. Still further, it is not in dispute that in the agreement to sell, the property having been mortgaged was not disclosed to the plaintiff.

In these circumstances, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

13.11.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No