

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

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**RSA No.1390 of 2018 (O&M)**

**Date of Decision:06.03.2018**

**Sarabjit Singh**

**.....Appellant**

**Vs.**

**Rashda Zarina Hameedullah .....Respondent**

**CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present:- Mr. Gagandeep Singh Sirphikhi, Advocate  
for the appellant.

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**RAMENDRA JAIN, J. (Oral)**

Defendant through this regular second appeal has laid challenge to the judgment and decree dated 03.01.2018 of the First Appellate Court dismissing his appeal, confirming the judgment and decree of the trial Court dated 05.05.2015, whereby suit of the respondent- plaintiff for specific performance was decreed.

Briefly stated, according to the respondent- plaintiff, appellant-defendant vide agreement dated 05.07.2006 agreed to sell his land measuring 2 kanals 17 marlas to him. An amount of ₹6 lakhs was paid as earnest money by the respondent- plaintiff by two modes, i.e. by cash and demand draft as well to the appellant- defendant at the time of execution of the aforesaid agreement to sell. The appellant- defendant agreed to execute and register the sale deed in favour of respondent- plaintiff on or before 15.01.2007 on payment of balance amount. Pursuant to the agreement to sell, the respondent- plaintiff further paid ₹2 lakhs to the appellant-defendant through his son Amritpal Singh i.e. ₹1 lakh each on 12.10.2006

and 03.01.2007, prior to the date of execution and registration of sale deed on 15.01.2007. Respondent- plaintiff was always ready and willing to perform part of her contract. Accordingly on 15.01.2007, i.e. the agreed date between the parties for registration and execution of the sale deed, respondent- plaintiff through her representative, namely, Safiq Ahmed went to Tehsil Office, Qadian with the balance sale consideration, but the appellant- defendant did not turn up. Therefore, aforesaid representative of the respondent- plaintiff got marked his presence before Executive Magistrate, Qadian on 15.01.2007. Thereafter, the appellant- defendant extended the date of execution of registration of sale deed from 15.01.2007 to 30.01.2007 on the pretext that he could not procure the relevant revenue record. On the extended date i.e. 30.01.2007, the aforesaid representative of the respondent- plaintiff again approached the appellant- defendant to perform part of his contract and even got served a legal notice dated 11.02.2009, but the appellant- defendant failed to perform part of his contract. With these broad submissions, respondent- plaintiff filed a suit for possession by way of specific performance with alternative prayer for decretal of her suit for ₹14 lakhs.

The learned trial Court after holding trial, vide impugned judgment and decree dated 05.05.2015, decreed the suit for specific performance of agreement for sale dated 05.07.2006 with costs.

Being aggrieved, the appellant- defendant preferred appeal, but remained unsuccessful as his appeal too was dismissed by the First Appellate Court vide judgment and decree dated 03.01.2018.

Learned counsel for the appellant- defendant inter-alia contends

that both the Courts below have failed to appreciate that the evidence of the respondent- plaintiff beyond pleadings was not to be looked into. The factum of purchase of stamp papers worth ₹80,000/- by the respondent- plaintiff was not pleaded by her in plaint. Therefore, the same ought to have been ignored by both the Courts below. The amount of ₹2 lakhs as part payment of the sale consideration was to be paid by the respondent- plaintiff on or before 05.08.2006, but the same according to the plaint, was paid on two different dates i.e. on 12.10.2006 and 03.01.2007, after the expiry of the said date 05.08.2006, in the ratio of one lakh each which shows that respondent-plaintiff was never ready and willing to perform part of her contract.

Both the Courts below also failed to appreciate that there was variance in the pleadings and evidence led by the respondent- plaintiff. In the plaint, respondent- plaintiff alleged that the date for execution and registration of sale deed was extended from 15.01.2007 to 30.01.2007 after marking presence of the representative of the respondent- plaintiff before the Sub-Registrar, Qadian, whereas alleged representative of the respondent- plaintiff while appearing as PW1 testified that the date aforesaid was extended prior to marking his presence before Sub Registrar. No site plan was made part of the pleadings. Since there was contradicting stand of the respondent- plaintiff, therefore, her suit was liable to be dismissed.

In support of his arguments, learned counsel for the appellant placed reliance upon a judgment of Telangana and Andhra Pradesh High Court in **Dhanraj (died) per LRs and Vijender Kumar Kedia v. Sales,**

2016(2) ALT 417 and judgments of Hon'ble the Supreme Court in Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others, 2008(2) ACJ 660 (S.C.), Lourdu Mari David v. Louis Chinnaya Arogiaswamy, 1997(1) R.C.R. (Civil) 286, Kashi Nath (Dead) through LRs v. Jaganath, 2004(1) R.C.R. (Civil) 213 and Ganesh Shet v. Dr. C.S.G.K. Setty, 1999(1) R.C.R. (Civil) 65.

I have given anxious considerations to the submissions of learned counsel for the appellant.

The appellant- defendant has not denied execution of agreement to sell dated 05.07.2006 and receipt of ₹6 lakh as earnest money by him. The only contest from him is qua readiness and willingness of the respondent- plaintiff to perform part of her contract.

As far as question regarding further part payment of ₹2 lakhs during subsistence of impugned agreement to sell beyond the date fixed i.e. 05.08.2006 by the respondent- plaintiff to the appellant- defendant is concerned, the same is completely devoid of any merit for the simple reason that acceptance of the said amount of ₹2 lakhs by the appellant-defendant beyond the agreed date amounts to his acquiescence. Therefore, he was estopped by his own conduct to plead the non fulfilment of terms and conditions of the agreement to sell in question in time by the respondent- plaintiff. To the contrary, further payment of ₹2 lakhs as part sale consideration to comply with the terms and conditions of the impugned agreement clearly proves about the readiness and willingness of the respondent- plaintiff to perform part of his contract.

It is needless to mention here that statement of a witness has to

be read as a whole and not in isolation. From the wholesome reading of the statement of PW1 Safiq Ahmed, it is clearly evident that on alleged date fixed for execution and registration of sale deed, i.e. 15.01.2007, he as a representative of the respondent- plaintiff had gone to the office of Sub Registrar, Qadian with the balance sale consideration and got marked his presence. The appellant- defendant cannot be permitted to read one line of his deposition in his favour that the date for execution of sale deed was extended prior to marking of his presence before Sub Registrar, contrary to the pleadings of respondent- plaintiff that it was extended after marking his presence. Moreso, above contradiction pointed out by learned counsel for the appellant is in fact no contradiction in the eyes of law. Even otherwise, the same is insignificant in nature and does not go the root of the case inasmuch as the entire controversy revolves around the fact as to whether the respondent- plaintiff was ready and willing to perform part of her contract or not, which she has been able to prove in her favour beyond any shadow of doubt, more particularly, from the fact that she had even purchased the stamp papers in advance spending ₹80,000/- much prior to the agreed date of execution and registration of sale deed.

In the pleadings, facts are to be pleaded precisely and not the entire events to make the same bulky and lengthy. All the necessary ingredients for filing a suit for specific performance have been pleaded and proved by the respondent- plaintiff in her plaint. Therefore, the submission of learned counsel for the appellant in this respect being devoid of any merit is turned down.

It is pertinent to mention here that the appellant- defendant

never disputed the boundaries of the suit property which were specifically given by the respondent- plaintiff in her plaint. Therefore, there was no necessity for production or proving any site plan on the record inasmuch as there was no dispute qua identity of the suit property.

No question of law much less substantial has been raised or arises in the pleadings.

I have gone through the judgment and decree of both the Courts below and find that there is no illegality and perversity in the same.

The facts and circumstances of the authorities relied upon by learned counsel for the appellant are not identical rather are distinguishable from the facts of the present case, therefore, no benefit of the same can be given to the appellant.

In view of discussion made above, the regular second appeal is dismissed.

**March 06, 2018**  
**renu**

**( RAMENDRA JAIN )**  
**JUDGE**

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |