

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

RSA No.1601 of 2018 (O&M)

Date of Decision: July 13, 2018

Gian Chand

...Appellant

Versus

Sandeep Kumar

...Respondent

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

Present: Mr.Aditya Dassaur, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal against the judgment and decree of the courts below whereby the suit for specific performance filed by the plaintiff-respondent has been decreed.

The plaintiff – respondent filed a suit seeking decree of possession by way of specific performance of agreement to sell dated 8.11.2011. The case set up in the plaint was that the defendant- appellant being owner in possession of the suit property i.e. two shops constructed over land measuring about one marla being part of property bearing Khasra No.3305/1-2185(10K-03M) situated in the area of village Mehli, Tehsil Banga, District SBS Nagar, entered into an agreement to sell the same with the plaintiff on 8.11.2011 for a sum of Rs.4 lacs. The defendant received Rs.2,90,000/- as earnest money from the plaintiff and executed separate receipt in that regard. The sale-deed was to be executed upto 10.10.2012. However, this time was extended up to 10.11.2012 vide endorsement dated 9.10.2012. The date stipulated for execution of the sale-deed i.e. 10.11.2012 happened to be a Saturday. 11.11.2012 was Sunday. On the very next day

i.e. 12.11.2012, the plaintiff remained present in the office of the Sub-

Registrar, Banga along with balance sale consideration and money for miscellaneous expenses, but the defendant did not turn up to execute the sale-deed, whereafter, the plaintiff got his presence marked through an affidavit.

The case of the defendant - appellant was that no such agreement to sell had been executed by him. In fact he had taken an amount of Rs.2,00,000/- as loan from the plaintiff on interest @ 4% per month for the purpose of sending his son abroad. He had paid to the plaintiff interest thereon amounting to Rs.48,000/- for the period from November, 2011 to 1.4.2012.

The Ld. Trial Court held that the plaintiff had successfully proved the agreement to sell by bringing on record the original agreement Ex.P2 and receipt Ex.P3. He had himself appeared as PW1. He examined the scribe and the marginal witnesses to the agreement as PW2, PW3 and PW4, respectively. On the other hand, DW2 Rajesh Kumar, who was examined by the defendant in support of his claim that the defendant had borrowed a sum of Rs.2,00,000/- from the plaintiff in order to send his son abroad, had stated that the documents regarding this loan were not prepared in his presence. The Ld. Trial Court, thereby, concluded that though the plaintiff had proved the due execution of the agreement through documentary as well as oral evidence, but the defendant had successfully rebutted the case by pleading that the agreement had been executed as security for the loan of Rs.2 lacs raised by the plaintiff. As admittedly, the said loan had not been returned by the defendant, the Court granted the alternative relief of recovery of Rs.2,90,000/- along with interest @ 12% per annum from 8.11.2012 till realisation.

The order of the Trial Court was appealed against by both the plaintiff and the defendant.

The Ld. Lower Appellate Court allowed the appeal of the plaintiff and dismissed the appeal of the defendant.

Reiterating the finding of the Ld. Trial Court, the Ld. Lower Appellate Court held that DW2 Rajesh Kumar, who had deposed that the transaction between the parties was a money transaction and not an agreement to sell, had admitted in cross-examination that in his presence there was only a talk of lending money by the plaintiff to the defendant. No writing had been made in his presence. Regarding the plea of the defendant that he had returned a sum of Rs.48,000/- accruing on account of interest the Ld. Lower Appellate Court held that Ex.D1, which had been placed on record claiming it to be the receipt in respect of the amount of Rs.48,000/- was a writing executed on the back side of a photocopy of the receipt dated 8.11.2011. This document was neither signed by the plaintiff or the defendant or any other attesting witnesses, hence, could not be relied upon.

The Court held that the plaintiff on the other hand had been able to prove the agreement to sell Ex.P2, the receipt of money Ex.P3, the endorsement Ex.P4 for extension of date for execution of the sale-deed from 10.10.2012 to 10.11.2012. The Ld. Lower Appellate Court thereby concluded that the Ld. Trial Court was not justified in concluding that the defendant had rebutted the evidence of the plaintiff. Further, considering that the plaintiff had averred and proved that he had performed and had always been ready and willing to perform his part of the agreement, it was held that the plaintiff was entitled for specific performance of the agreement.

Accordingly, the appeal of the plaintiff was allowed. The judgment and

decree of the Ld.Trial Court granting alternative relief of the recovery of the earnest money along with interest was set aside. The suit of the plaintiff for specific performance of the agreement of sale dated 8.11.2011 was decreed. The appeal of the defendant was dismissed.

Ld. Counsel for the appellant mainly contended that the Ld. Lower Appellate Court has wrongly concluded that the plaintiff had been able to establish that he was ready and willing to execute the sale-deed. He states that there was no evidence to prove that the plaintiff had available with him the entire amount which was required to be paid for executing the sale-deed.

There is no merit in the aforesaid contention. The total sale-consideration in terms of the agreement to sell was Rs.4 lacs out of which a sum of Rs.2,90,000/- had been paid by the plaintiff to the respondent as earnest money at the time of entering into the agreement to sell. The balance amount was only Rs.1,10,000/-. The plaintiff had appeared before the Sub-Registrar, Banga on 12.11.2012 for execution of the sale deed. It is his case that he had brought along with him the balance sale-consideration and requisite money for miscellaneous expenses. He waited the entire day for the defendant, who did not turn up and ultimately the plaintiff got his affidavit attested from Executive Magistrate, Banga as a proof of his having attended the said office. The defendant admittedly did not turn up to execute the sale deed. The plaintiff had already paid about 3/4th of the total sale-consideration to the defendant. The amount of Rs.1,10,000/- which was outstanding, was not such a heavy amount. There is no reason to believe that the plaintiff, who had already paid about 3/4th (Rs.2,90,000/-) of the sale-consideration did not have the balance 1/4th amount (Rs.1,10,000/-) with him or that he could not arrange the said amount. The very fact that he

appeared before the Sub-Registrar and waited the entire day for execution of the sale-deed itself indicates his readiness and willingness in this regard.

In Sukhbir Singh and others vs. Brij Pal Singh and others AIR 1996

SC 2510 it was observed as under:

“5. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till date of the decree. It would, therefore, be clear that the courts below have appropriately exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law.”

Thus, there is no merit in this contention of the Ld. Counsel for the appellant.

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

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

July 13, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No