

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

**RSA No.5855 of 2014 (O&M)
Date of Decision: March 01, 2018**

Rajesh Kumar

...Appellant

Versus

Narender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashwani Bakshi, Advocate
for the appellant.

Mr. Anurag Jain, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

Plaintiff/Narender Kumar initially filed a suit for specific performance in respect of agreement to sell dated 24.10.2006 on the grounds that father of the defendant-Pawan Kumar was owner of 24 kanals of land, who earlier on 12.12.1994 sold 15 kanals of land to defendant-M/s Lahoria Ceramics Pvt. Ltd and, thereafter, undertook through another agreement to sell dated 24.10.2006 with Pawan Kumar to sell the remaining land measuring 9 kanals for total consideration of Rs.15,00,000/- and took Rs.100,000/- as earnest money. The date of execution of the sale deed was fixed for 31.12.2006. The plaintiff claims that he was ready and willing to undergo his part of the contract and had appeared before the Registrar for getting the sale deed executed and was ready with the money etc. but the defendant-Pawan Kumar did not appear and, hence, the suit in question after the defendant did not response to notice dated 25.01.2007. The defendant in his written statement despite raising preliminary objections took the stand of total denial claiming that his signatures were obtained on blank papers

which have been subsequently fabricated as agreement to sell and claimed to have sold the property to defendant-Pawan Kumar through sale deed dated 25.01.2007. The trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the plaintiff is entitled to the possession of the suit land by way of specific performance of agreement to sell dated 24.10.2006 allegedly executed by the defendant No.1 in his favour? OPP
2. Whether the defendant has received the earnest money of Rs.100,000 from the plaintiff in lieu of the performance of the agreement to sell dated 24.10.2006 allegedly executed by him? OPP
3. Whether the plaintiff has always been ready and willing to perform his part of contract, if so, its effect? OPP
4. Whether the suit is false, frivolous and is liable to be dismissed with special costs? OPD
5. Whether the suit is bad for want of ad valorem Court fee?OPD
6. Whether the plaintiff has no cause of action and or locus standi to file the present suit?OPD
7. Whether the plaintiff has not come to the Court with clean hands and if so its effect?OPD
8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
9. Whether the civil Court has no jurisdiction to try and decide the present suit? OPD
10. Relief.

The plaintiff examined Rup Chand, Clerk as PW1; Rajesh Kumar Clerk as PW2; Suresh Kumar Ahlmad as PW3; Om Parkash, Clerk, PW4, Sohan Lal as PW5. Dalip Singh, Clerk, PW6; Shailiesh Ahlawat PW7; Hoshiar Singh, Patwari, PW8 Ashok Kumar PW9; Hoshiar Singh, PW10; Roshan Lal PW11, Rajesh Poonia, Advocate PW12 and himself stepped into the witness box as PW13 and proved documents Ex.P1, Ex.PW3/A, Ex.PW3/B, Ex.PW4/A,Ex.PW5/1, Ex.PW5/2, Ex.PW5/3,Ex.PW5/4,Ex.PW5/5,Ex.PW5/6,Ex.PW5/7,Ex.PW5/8,Ex.PW5/9, Ex.PW5/10,Ex.PW7/A,Ex.PW7/B,Ex.PW8/A,Ex.PW8/B,,Ex.PW10/B,Ex.P

W10/C,Ex.PW10/D,Ex.PW10/E, Ex.PW10/E,Ex.PW10/F,Ex.PW11/1.
 ,Ex.PW12/A,Ex.PW13/1,Ex.PW13/2,Ex.PW13/3,Ex.PW13/4,Ex.PW13/5,E
 x.PW13/6,Ex.PW13/7, Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE, Ex.PF, Ex.PG,
 and, thereafter, closed his evidence. Defendant Rajesh Kumar testified as
 DW1 and Naveen lahoria as DW2 and after proving documents Ex.D1,
 Ex.DW2/1, Ex.DW2/2, Ex.DW2/3, Ex.DW2/4 and Ex.DW2/5 to
 Ex.DW2/12 closed their evidence. The Court of learned Additional Civil
 Judge, Senior Division, Hisar through judgment and decree dated
 16.08.2013 decreed the suit of the plaintiff-Narender Kumar with costs.
 Upon filing appeal, the Court of learned Additional District Judge, Hisar
 through judgment dated 28.10.2014 dismissed with costs the appeal of the
 unsuccessful defendants and that is how the subsequent buyer Rajesh
 Kumar/appellant has come up in this appeal.

Heard, learned counsel for the parties and perused the
 records of the case. The first and foremost argument that has sought to be
 put forth by the two sides revolves around the fact that the execution filed
 by plaintiff stands duly satisfied vide order dated 19.9.2013 and, therefore,
 appeal has become infructuous certainly has been well countered by learned
 counsel for the appellant who sought reliance on 2015(1) RCR(Civil) 62
Subhash Chander and others vs. M/s Active Promoters Pvt. Ltd and 1999
AIR (SC) 3248 Ram Kumar Aggarwal and another vs. Thawar Das
(dead) through LRS to hammer home the point where a similar
 proposition had arisen and this Court while relying on Apex's Court view in
AIR 1999 (SC) 3248 in the case of *Ram Kumar Aggarwal and another vs.*
Thawar Das (dead) through LRS held that merely because the decree

under appeal has been executed for want of stay order from the Superior Court the right of the judgment debtor to prosecute the appeal is not lost without there being something to show that the judgment debtor had waived or consciously given up his right of prosecuting the appeal. Holding further that if in case so necessitated appellant can file restitution of possession. However, the same could not be controverted by learned counsel for the respondent. Thus, locus standi of the appellant to pursue the regular second appeal certainly holds good and he is well within his right to seek this statutory remedy.

The second point arises over the entitlement of the plaintiff to specific performance of the agreement in question. It is at times claimed by defendant in his written statement that his signatures were obtained on blank papers and subsequently agreement to sell was prepared shows invariably that the defendant owner does not deny his signatures on the document in question which is an agreement to sell and, therefore, onus lay heavily upon him to prove the same that it was not a voluntarily executed document on very free will and accord and was an outcome of fraudulent act of the other side,. As has been pointed out by the respondent side the defendant-Pawan Kumar who is the main contesting person purported to have executed agreement to sell never stepped into witness box to controvert the case of the plaintiff. No doubt, the subsequent purchaser has sought to testify as DW1 but a person having no first information and knowledge being subsequent purchaser cannot successfully controvert the case of the plaintiff, who himself has testified as PW13 and, thus, such a circumstance certainly goes against the defendant.

The last date for execution of the sale deed was fixed as 31.12.2006 and as has been the stand of the defendant-Pawan Kumar 1st January, 2007 was a holiday and he got his presence marked on 02.01.2007 and the document in support of this fact has been proved by plaintiff by way of Ex.PW13/2 and, thereafter, he has served legal notice Ex.PW13/3 on 25.1.2007 regarding which postal receipt proved as Ex.PW13/A. However, defendant has not brought on record any such document that it was on account of default of the plaintiff the sale deed could not be got executed. The plaintiff in his testimony as PW13 and so in his plaint has raked up the plea that he has been ready and willing throughout from the date of execution of agreement till filing of the suit to get the sale deed executed and has thus fulfilled the requirements of Section 15 read with Section 22 of the Specific Relief Act, 1963. More so, as is there the own case of the parties and so of the appellant in the light of the arguments put forth the sale deed between Narender Kumar and Pawan Kumar defendant has been got executed on 25.1.2007 for sum of Rs.10,00,000 when few days prior thereto a total sale price has been fixed for Rs.15,00,000/- certainly creates a doubt the haste with which appellant side has gone about to get the sale deed executed, together with the fact that price on which it has been negotiated are circumstances which goes to show that the defendant-Pawan Kumar seller did not have the intention to undergo his part of the contract and obligation arising out of agreement to sell dated 24.10.2006. On the other hand the readiness and willingness of the plaintiff is borne out from the fact that he has served notice upon defendant on 25.01.2007 and is rather other corroborative factor to show as to the element of readiness and willingness

on the part of the plaintiff to undergo his part of the obligation. Though, power to grant relief in a suit for specific performance is discretionary one, however the same depends upon the facts and circumstances of each case for which no hard and fast rule can be laid down. In the present case the plaintiff has brought about ample oral as well as documentary evidence from all sources to show his readiness and willingness to undergo his part of the contract. Reliance has sought to be placed on 1997 (Suppl.) Civil Court Cases 111 (P&H) Nirmal Singh and other vs. Smt Geho and another wherein our High Court has clearly laid down the proposition that subsequent purchaser cannot rake up the plea that plaintiff was not ready and willing to undergo his part of the contract. Besides the fact that the very statutory provisions of Section 100 CPC clearly lays down that High Court has no jurisdiction to interfere in findings on the facts arrived at by Court below for which reliance placed upon case of Madhavan Nair vs. Bhaskar Pillai (dead) by LRs 2005(10) SCC 533. In the light of settled proposition of law which cannot be refuted by learned counsel for the appellant there appears to be no misconstruing of evidence by the Courts below and the concurrent findings of the two Courts below are the correct appreciation of evidence and law and need to be upheld. Thus, the appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 01, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No