

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

RSA No.5930 of 2014 (O&M)

Date of decision : 13.11.2018

Gurbachan Singh

...Appellant

Versus

Saudagar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

Mr. Arihant Jain, Advocate for
Mr. Arun Jindal, Advocate for respondent No.2.

Mr. S.S. Salar, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit for possession by way of specific performance of the agreement to sell dated 18.05.2001.

Both the Courts on appreciation of the evidence have found that the plaintiff is not proved to be ready and willing to perform his part of the contract. As per the agreement to sell, the sale deed was to be executed on 20.11.2002 at Amargarh where the Sub-Registrar's office was located. The plaintiff claims that he was present in the office of the Sub-Registrar but the affidavit to prove his presence is attested at Malerkotla which is 15 KM away from the Amargarh. The plaintiff has not produced any evidence that he was present at Amargarh on the day fixed in the agreement to sell for execution and registration of the sale deed. Still further, the affidavit attested by the plaintiff is by a Notary Public and not from the Sub-Registrar

and that also at Malerkotla. In such circumstances, the Courts below have rightly held that the plaintiff is not proved to be ready and willing to perform his part of the contract and hence, the refund of the earnest money has been ordered.

Learned counsel for the appellant while relying upon a judgment passed in the case of **Gurjit Singh and another Vs. Tarsem Singh and another, 2012(3) PLR 16** has contended that once the plaintiff had filed a suit for injunction before filing the suit for specific performance of the agreement to sell, therefore, it must be assumed that the plaintiff was ready and willing.

In the considered view of this Court, the aforesaid judgment is in peculiar fact situation and does not as a ratio decidendi lays down that if the plaintiff has filed a suit for permanent injunction before the target date in all cases, the plaintiff must held to be ready and willing to perform his part of the contract.

The crucial date in the present case is 20.11.2002. The plaintiff has to show that he was ready and willing to perform his part of the contract on that day which was fixed under the agreement to sell. Once the plaintiff has failed to prove that, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

13.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No