

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

RSA No.3675 of 2017 (O&M)
Decided on:-January 29, 2018.

Kulwinder Singh.

.....Appellant.

Versus

Gandharav Singh.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Ankur Bansal, Advocate
 for the appellant.

HARI PAL VERMA, J.

The appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 08.05.2017 passed by learned Additional District Judge, Jalandhar, whereby his appeal against the judgment and decree dated 12.01.2016 passed by learned Additional Civil Judge (Senior Division), Jalandhar, was dismissed.

Briefly stated, the appellant-plaintiff had filed a suit against the respondent-defendant, seeking a decree for specific performance of the agreement to sell dated 27.08.2009. An alternative relief of recovery and permanent injunction was also sought by the plaintiff.

It was pleaded by the appellant-plaintiff that the respondent-defendant entered into an agreement dated 27.08.2009 with the plaintiff in respect of land measuring 12 Kanals 11 Marlas situated at village Daroli Kalan comprised in Khata No.27/34 as per Jamabandi for the year 2007-08.

An amount of Rs.1 lakh was received by the respondent-defendant as earnest money and balance sale consideration of Rs.11 lakhs was to be paid at the time of execution and registration of the sale deed, which was to be executed on or before 30.11.2009. At the time of execution of the agreement, the defendant gave possession of his shop to the plaintiff. The plaintiff approached the defendant a number of times to execute the sale deed in his favour before 30.11.2009, but he repeatedly put off the matter on one pretext or the other. On 29.11.2009, the plaintiff visited the house of defendant to remind him about the last date of execution of sale deed and the defendant promised that he will be present in the office of Sub Registrar, Jalandhar at 11:00 AM. On the next day i.e. 30.11.2009, the plaintiff along with balance sale consideration of Rs.11 lakhs and money for the purchase of stamp papers, scribe fee and other charges reached the office of Sub Registrar, Jalandhar for the execution and registration of the sale deed. He waited for the defendant from 09:00 AM to 4:45 PM, but the defendant did not turn up. The plaintiff made an application to the Office of Sub Registrar, Jalandhar for marking his presence. The plaintiff was ready and willing to perform his part of the obligation under the agreement, but the defendant backed out from agreement. Hence, the suit.

In his written statement, the respondent-defendant took the preliminary objections that agreement was not registered. The plaintiff has filed false and vexatious suit and claimed Rs.50,000/-as compensatory costs. The details of Khasra numbers of suit land have not been given in the plaint. On merits, execution of agreement and receipt of earnest money were

admitted. It was further replied that defendant went to the office of Sub Registrar and moved an application to Naib Tehsildar, Adampur, but the plaintiff did not turn up there to discharge his liability. The defendant got his presence marked before Naib Tehsildar, Adampur on 30.11.2009. Remaining averments of plaint were denied and a prayer for dismissal of the suit was made.

On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether plaintiff is entitled for grant of decree for specific performance of the agreement to sell dated 27.08.2009 as prayed for? OPP
2. Whether plaintiff is entitled in the alternative relief of recovery of Rs.1 lakh, as prayed for? OPP
3. Whether plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
4. Whether suit is not maintainable? OPD
5. Whether suit has not been properly affixed for the purpose of court fee and jurisdiction? OPD
6. Relief.

Vide judgment and decree dated 12.01.2016, learned civil Court dismissed the suit of the appellant-plaintiff by holding that that the plaintiff has failed to prove that he was ready and willing to get the sale deed executed and registered. Agreement is regarding share in Khasra No.27254, 4827-4862, 2502, 4700, 4701, 4702 and 4706. In the plaint, he has not given any detail of these Khasra numbers. He has also not placed on record any document to show that the defendant delivered possession of specific area in these Khasra numbers. Learned civil Court further held that the plaintiff cannot be allowed

to take advantage of any weakness of the defendant. Even if it is not proved on file that the defendant was not ready and willing to perform his part of contract, it cannot be said that the plaintiff was ready and willing to perform his part of contract.

Aggrieved against the aforesaid judgment and decree dated 12.01.2016 passed by the civil Court, the appellant-plaintiff preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 08.05.2017.

Still aggrieved, the appellant-plaintiff has filed the present regular second appeal.

Following questions of law have been raised by the appellant-plaintiff:

- 1) Whether plaintiff can be non-suited to the grant of decree of specific performance of the contract once execution of agreement is admitted by the respondent?
- 2) Whether the findings of the Courts below as to the plaintiff's non readiness and willingness to perform his part of the contract of sale can be said to be sustainable in view of Section 16(c) of the Specific Relief Act?
- 3) Whether readiness and willingness of the plaintiff can be looked into once the defendants/respondents have not denied the execution of agreement to sell nor denied the readiness and willingness of the plaintiff in his written statement?
- 4) Whether filing the instant suit on 18.09.2010 i.e. within 10 months from the stipulated date fulfils the essential ingredient of Section 16(c) of the Specific Relief Act, 1963 as the purport of the expression "readiness and willingness"?
- 5) Whether the findings of the learned courts below are

beyond the pleadings and the evidence on record in so much as the agreement to sell is admitted and proved on the record?

- 6) Whether there exists misreading and misinterpretation of pleadings and evidence by the learned Courts below?
- 7) Whether in light of the facts and circumstances of the present case, the learned Courts below is legally justified in exercising the discretion in not granting the decree for specific performance in favour of the appellant?

Learned counsel for the appellant-plaintiff has argued that the findings recorded by the Courts below are contrary to facts and law and, therefore, are liable to be set aside. Both the Courts below have caused a grave miscarriage of justice while passing the impugned judgments and decree without taking into consideration the basic provisions of law. The material facts which are duly proved on record have been totally ignored and brushed aside by both the Courts below.

He has further argued that the civil Court had wrongly dismissed the suit of the plaintiff by observing that he has failed to prove his readiness and willingness on the record. Even the lower appellate Court did not consider the case of the plaintiff and dismissed the appeal. The appellant-plaintiff was always ready and willing to honour the agreement to sell dated 27.08.2009 and it was the respondent-defendant, who is having a dishonest intention and flouted the terms and conditions of the agreement.

I have heard learned counsel for the appellant-plaintiff and have gone through the impugned judgments passed by the Courts below.

The execution of the agreement to sell dated 27.08.2009 is not in dispute. The matter in dispute in this case relates to the readiness and

willingness. Record reveals that though the appellant-plaintiff has placed on record his affidavit dated 30.11.2009 Ex.P2 to prove that he was ready and willing to get the sale deed executed and registered in his favour, but in that affidavit, the appellant-plaintiff has not disclosed his willingness to get the sale deed executed from the respondent-defendant. Rather, he has raised some conditions by submitting in the said affidavit that the vendor wants to execute the sale deed of land measuring 4 Kanal 16 Marlas which falls on the rear side. He has further submitted in the affidavit that either the vendor executes the sale deed of the area shown to the appellant or he decreases the price of the area which falls on the rear side or he returns his earnest money. Thus, the contents of said affidavit Ex.P2 clearly indicate that the appellant-plaintiff put some conditions in his affidavit before the respondent-defendant, prior to get the sale deed executed and registered in his favour. Further, these facts have not been pleaded by the appellant-plaintiff in his plaint that the respondent-defendant refused to execute the sale deed in his favour as per the land mentioned in the agreement to sell dated 27.08.2009. Thus, the readiness and willingness on the part of the appellant-plaintiff has not been proved by way of his affidavit Ex.P2 as he was not supposed to raise conditions before the execution of the sale deed.

Since the appellant-plaintiff has failed to prove his readiness and willingness to execute the sale deed in favour of the respondent-defendant, the main issues No.1 to 3 were rightly answered by the civil Court against the plaintiff and in favour of the defendant. The appeal filed by the plaintiff has

rightly been dismissed by learned lower appellate Court. Therefore, there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 12.01.2016 passed by the civil Court as well as the judgment and decree dated 08.05.2017 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

January 29, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No