

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

**RSA No.808 of 2014 (O&M)
Date of Order: 05.09.2018**

Sham Sunder

..Appellant

Versus

Shammi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B.Goel, Advocate,
for the appellant.

Mr. Rajesh Sethi, Advocate
Mr. Arun Biriwal, Advocate,
Mr. Pridhi Jaswinder Sandhu, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below while decreeing suit for specific performance of the agreement to sell dated 14.01.2004 with respect to a house owned by the defendant-appellant.

According to the plaintiff, agreement to sell was executed for sale of the house in question on 14.01.2004 for a total sale consideration of Rs.5,40,000/- and an earnest money of Rs.1,25,000/- was paid. Defendant agreed to get clearance certificate from the Electricity Board and clear all the arrears of water and electricity charges. It is further case of the plaintiff that an additional amount of Rs.1,00,000/- was paid as demanded by the defendant on 18.03.2004. As per the agreement to sell, the target date for execution and registration of the sale deed was fixed as 27.05.2004 but

thereafter since defendant was not in a position to vacate the house, hence the date was extended to 17.08.2004. Plaintiff further pleaded that he was ready and willing to perform his part of the contract and he visited the office of the Sub-Registrar on 12.07.2004 and got his presence marked. Plaintiff further pleaded that notice was issued to the defendant calling upon him to come and execute the sale deed vide notice dated 16.03.2007 on 02.04.2007 but the defendant did not come present, plaintiff again visited the office of Sub-Registrar on that day. Plaintiff further pleaded that he has been ready and is still ready and willing to perform his part of the contract.

Defendant contested the suit and pleaded that the agreement to sell was executed in favour of brother of the plaintiff i.e. Raman Kumar and earnest money was also received. However, execution of the agreement to sell specific performance whereof has been sought was disputed.

Both the courts after examining the evidence have concurrently found that the plaintiff was always ready and willing to perform his part of the contract, therefore, the plaintiff is entitled to specific performance of the agreement to sell.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that there is an unexplained delay in filing the suit as the suit was filed almost at the fag end of the period of limitation i.e 3 years prescribed for filing such suit. He submitted that there is no explanation as to why filing of the suit was delayed. He submitted that once the suit is filed at the fag end of the period of limitation, specific performance cannot be granted. He further relied

upon a judgment passed by the Hon'ble Supreme Court in the case of **Manjunath Anandappa vs. Tammannsa and others(2003) 10 SCC 390.**

On the other hand, learned counsel for the respondent has pointed out that the suit was filed not at the fag end. In fact the plaintiff has been requesting the defendant to honour the agreement to sell and perform his part of the contract, however, the defendants has been delaying. He has further drawn attention of the court to the statement of defendant wherein he states that now he is not ready to execute the sale deed, although, at that point of time he was ready to execute the sale deed as on account of death of his son and he wanted to purchase another house but since he could not get another house, therefore, he did not execute the sale deed.

It is undisputed that the defendant in the written statement admits that there was an agreement to sell with the brother of the plaintiff and he had received earnest money. There is a written agreement to sell between the parties which shows that it is the plaintiff with whom defendant had entered into an agreement to sell. Still further on 18.03.2004, there is an endorsement on the reverse of the first page of the agreement to sell, wherein payment of additional amount of Rs.1,00,000/- has recorded, duly signed by the defendant. Further there is further endorsement on the same page dated 27.05.2004, when date for execution and registration of the sale deed was extended to 10.07.2004. There is another endorsement by which the date was extended to 17.08.2004, however, same is not signed by the parties as the plaintiff has pleaded that the defendant was insisting on the entire payment but the plaintiff insisted for execution and registration of the sale deed.

In these facts, the court is required to examine whether there is

delay in filing the suit and whether such delay would dis-entitles the plaintiff from discretionary relief of specific performance of the agreement to sell.

It is not in dispute that the limitation for filing a suit for specific performance of the agreement to sell is 3 years either from the target date agreed to between the parties or in case there is no target date, the date on which when the plaintiff has a notice that the performance has been refused. In the present case, as per the agreement to sell, the extended target date is 10.07.2004, whereas the suit was filed on 12.04.2007. Hence, the suit is not filed at the fag end of the limitation.

No doubt, Hon'ble the Supreme Court in a peculiar facts situation has held that since decree for specific performance of the agreement to sell is discretionary, therefore, the court while granting the specific performance of the agreement to sell must examine the facts of the case. The judgment relied upon by the learned counsel for the appellant is in a peculiar fact situation and the Hon'ble Supreme Court does not as a ratio decidendi lay down that in all cases where the suit is filed just before the date when the limitation for filing such suit is to expire, the discretionary relief cannot be granted. In the aforesaid, Hon'ble Supreme Court noticed that the suit filed by the plaintiff was almost 6 years after the date of agreement to sell and that also when plaintiff had notice of the sale deed in favour of appellant. It is undisputed that in the present case on 16.03.2007, plaintiff had issued a notice calling upon the defendant to come and execute the sale deed.

Defendant did not chose to reply to the aforesaid notice. Still further the statement of defendant as noticed while noticing submission of

learned counsel for the appellant, clearly proves that the defendant had entered into an agreement to sell and was wanting to sell the house.

Still further Ex.D1 is the affidavit produced by the defendant himself wherein he admits that there was an agreement to sell in favour of brother of the appellant and he had received a sum of Rs.1,25,000/- on 14.01.2004 and received additional amount of Rs.1,00,000/- on 18.03.2004.

Keeping in view the fact that both the courts have exercised the discretion which is neither shown to be perverse nor result of any error, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

September 05, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No