

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

RSA No. 5248 of 2018 (O&M)

Date of decision:13.11.2018

Balbir Singh

..... Appellant.

Versus

Manbhari

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.J.S.Chahal, Advocate
for the applicant-appellant.

LISA GILL,J.

CM-14409-C of 2018.

Heard.

Keeping in view the averments in the application as well as arguments addressed, delay of 31 days in re-filing of this appeal is condoned.

Application is disposed of.

R.S.A No. 5248 of 2018 (O&M)

Appellant-plaintiff is aggrieved of judgment and decree dated 13.03.2018, passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, whereby judgment and decree dated 24.03.2011 passed by the learned Additional Civil Judge (Sr. Division), Bilaspur (Yamuna Nagar), decreeing the suit filed by the appellant-

plaintiff has been set aside consequently dismissing the suit filed by the appellant-plaintiff to the extent that decree of specific performance of agreement to sell 26.02.2004 was denied and recovery of ₹2,90,000/- with interest at the rate of 18% per annum, was allowed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 26.02.2004 executed by the defendant in favour of the plaintiff in respect of the land as described in the plaint and for restraining the defendant-respondent from alienating or transferring the suit land to anybody else except the plaintiff by way of sale, mortgage, lease or in any other manner. It was pleaded that defendant being owner in possession of the land, entered into an agreement to sell the suit land with the plaintiff on 26.02.2014 for a sum of ₹4 lakh and received a sum of ₹1,20,000/- as earnest money from the plaintiff in the presence of the witnesses. Target date for execution and registration of the sale deed was fixed as 25.02.2005 on payment of balance sale consideration. The defendant showed her inability to execute the sale deed in favour of the plaintiff on 25.02.2005 and the date for execution and registration of the sale deed was extended to 25.02.2006 by mutual consent. Defendant received a sum of ₹1,20,000/- as part payment on 25.02.2005. Defendant again expressed her inability on 22.02.2006 to execute the sale deed in favour of the plaintiff and requested for extension of time. Time for extension and registration of the sale deed was again extended to 30.06.2006. At that time also, plaintiff paid a sum of ₹50,000/- as part payment to the defendant. In this manner, the

defendant received a sum of ₹2,90,000/- from the plaintiff. It was further pleaded that the appellant-plaintiff remained ready and willing to perform his part of contract, but the defendant never turned up to perform her part of contract.

It was further pleaded that on 30.06.2006, plaintiff remained present in the office of Joint Sub-Registrar, Chhachhrauli along with balance sale consideration for getting the sale deed executed and registered, but the defendant did not turn up. Plaintiff got his presence marked by suffering an affidavit before the Executive Magistrate, Chhachhrauli. Appellant-plaintiff requested the defendant to execute and get registered the sale deed, but the defendant delayed the matter on one pretext or other. Legal notice dated 10.06.2006 was also served upon the defendant, but defendant did not accede to the request of the appellant. Hence the suit.

Suit was resisted by the defendant-respondent. Various preliminary objections were raised in the written statement and contentions on merits were controverted. It was stated that the plaintiff had not approached the Court with clean hands. It was denied that the defendant ever received ₹4 lakh for execution of agreement to sell in favour of the plaintiff. It was stated that family of the defendant was in need of money and son of the defendant namely Maya Ram approached the plaintiff and requested him to lend her a sum of ₹1,20,000/- on interest for one year. Plaintiff agreed to extend the loan to the son of the defendant on the condition that Maya Ram and defendant shall append their thumb impressions on blank papers as well as other papers as token

of security. It was stated that plaintiff gave ₹1,20,000/- to the son of the defendant as loan on interest at the rate of 18% per annum. It was further stated that plaintiff assured Maya Ram, son of the defendant and defendant that on the repayment of loan amount, the plaintiff shall return the said papers to them. Upon this, plaintiff took Maya Ram and defendant to Chhachhrauli and obtained thumb impression of the defendant and signatures of the son of defendant on blank stamp papers and some other papers.

It was further stated that family of defendant was again in need of money and approached the plaintiff for the same on loan. The plaintiff again took Maya Ram and defendant to Chhachhrauli, where plaintiff got thumb impressions of defendant and signatures of the son of the defendant on blank papers and other papers. At that time, the plaintiff deducted a sum of ₹21,600/- on account of interest for a period of one year and further paid ₹98,400/- to the son of the defendant as loan on interest at the rate of 18% per annum. Family of the defendant, it was claimed was facing severe financial crisis, therefore, son of the defendant requested the plaintiff to give him some more time for repayment of the loan amount. Plaintiff however replied that a sum of ₹43,200/- was due on account of interest on ₹2,40,000/- and asked them either to pay the same immediately or get the amount adjusted in the principal amount. Plaintiff again took Maya Ram and defendant to Chhachhrauli and got thumb impression of defendant and signatures of the son of the defendant on blank stamp papers on the pretext of adjustment of interest amount in the principal loan amount. It was denied that any agreement to sell their

property was ever entered into by them with the plaintiff. Dismissal of the suit was prayed.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the defendant executed agreement to sell dated 26.02.2004 in favour of the plaintiff to sell the suit property for a total sale consideration of ₹4,00,000/- and received ₹2,00,000/- from the plaintiff against total sale consideration as alleged?OPP
2. Whether the plaintiff had been and is still ready and willing to perform his part of the agreement as prayed for?OPP
3. If issues no.1 and 2 are proved, whether the plaintiff is entitled to permanent injunction as prayed for?OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether plaintiff has no locus standi to file the present suit?OPD
6. Whether plaintiff is stopped from filing the present suit by his own act and conduct?OPD
7. Whether suit is bad for mis-joinder and non-joinder of necessary parties?OPD
8. Whether suit of the plaintiff is barred by the provisions of Specific Relief Act?OPD
9. Whether the plaintiff has not come to the court with clean hands and has concealed true and material facts? if so, to what effect?OPD
10. Whether the defendant is entitled to special costs? OPD.
11. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that the agreement to sell dated 26.02.2004 by the defendant in favour of the plaintiff in respect to the suit property was duly proved. Therefore, suit for specific performance of the said agreement was decreed in favour of the plaintiff-appellant.

Appeal against the said judgement and decree was preferred by the respondent-defendant. Learned First Appellate Court, while observing that though execution of the agreement to sell dated 26.02.004 was proved, readiness and willingness on the part of the appellant-plaintiff to carry out his part of the contract was not proved on record. Therefore, relief of specific performance of the agreement was denied, while directing that the defendant-respondent would be liable to return the sum of ₹2,90,000/- along with interest at the rate of 18% per annum from the date of payment of the said amount till realisation.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that learned First Appellate Court has wrongly denied the relief of specific performance to the appellant while setting aside the well reasoned and logical judgement and decree dated 24.03.2014, passed by the learned trial Court. Agreement to sell dated 26.02.2004 is duly proved on record. Question of readiness and willingness of the appellant-plaintiff to execute his part of contract has been wrongly dealt with by the learned Additional District Judge, Yamuna Nagar at Jagadhri. There is clear-cut evidence on record to show that the appellant was always ready and willing to carry out his part of contract. Various extensions were afforded for execution of the sale deed at the instance of the defendant. Various amounts were handed over by the appellant to the defendant at the time of the said extensions. Moreover, legal notice Ex.P11 was issued by the plaintiff-appellant for execution of the sale deed. Defendant-respondent did not

even file a reply to the said notice. The appellant was present before the Sub-Registrar for execution of the sale deed on the stipulated dates. His affidavit dated 30.06.2006 (Ex.P-10) has been duly proved on record. Thus readiness and willingness on the part of the appellant is clearly proved on record.

Learned counsel for the appellant further submits that during the pendency of the suit, an agreement to sell was subsequently executed in March 2007 by respondent-defendant with one Naresh Kumar. In respect to the said subsequent agreement to sell, a suit was filed by said Naresh Kumar for specific performance of the agreement to sell in respect to 12 Kanal 5 Marlas of land which include 8 Kanal of land which is the subject matter of the present proceedings. It is submitted that the suit filed by Naresh Kumar was decreed to the extent of 4 Kanal 5 Marlas vide judgment and decree dated 24.03.2014 i.e. the date on which the learned trial Court decided the present suit as well. Moreover, defendant herself never stepped in to the witness box to support her case. Therefore, judgment and decree dated 13.03.2018, passed by the learned Additional District judge, Yamuna Nagar at Jagadhri, should be set aside and judgment and decree dated 24.03.2014, passed by the learned trial Court be upheld.

I have heard learned counsel for the appellant and have gone through the copies of the record which is produced in Court today by him.

Both the learned Courts below have concluded that execution of the agreement dated 26.02.004 (Ex.P-1) has been duly

proved. The date stipulated for the execution of the sale deed as per the agreement was a year thereafter i.e. 25.02.2005. Earnest money to the tune of ₹1,20,000/- was given to the plaintiff at the time of execution of the agreement dated 26.02.2004. The parties agreed to extend the date for execution of the sale deed for another year on 25.02.2005 i.e. up till 25.02.2006. There is no specific reason mentioned for the extension in Ex.P-2. A sum of ₹1,20,000/- was handed over to the defendant at that time while recording that an amount of ₹1,60,000/- still remained due. Remaining conditions of the agreement were kept intact. Time for execution of the sale deed was again extended on 22.02.2006 from 25.02.2006 to 30.06.2006 while handing over another sum of ₹50,000/- to the defendant. Plaintiff alleged to have remained present in the office of the Sub-Registrar on 30.06.2006 with balance sale consideration. However, in his cross-examination the plaintiff stated that he had ₹40,000/- with him. Plaintiff has deposed that a sum of ₹1,20,000/- was arranged by him on 25.02.2005 from the sale of poplar trees. Learned Additional District Judge, Yamuna Nagar at Jagadhri has rightly observed that the evidence on record reflects that the various extensions for the execution of the sale deed were effected at the instance of the plaintiff and not the defendant. It is indeed proved from the evidence on record that it was the plaintiff who was not ready and willing to execute his part of contract. Thus, the learned First Appellate Court, has rightly modified the judgement and decree dated 24.03.2011, passed by the learned trial Court and directed refund of ₹2,90,000/- along with interest as mentioned above.

In all fairness, it is necessary to refer to the argument vehemently raised by learned counsel for the appellant that the defendant-respondent subsequently entered into an agreement to sell some of his land, including part of the suit land to one Naresh Kumar, who filed a suit seeking specific performance of the agreement in his favour. It is submitted by learned counsel for the appellant that the said suit was decreed in favour of Naresh Kumar to the extent of 4 Kanal 5 Marlas vide judgement and decree dated 24.03.2014 i.e. the date on which the plaintiff-appellant's suit was decreed, as well. It is further submitted that hearing of both the suits was conducted at the same time though separate evidence was led. It is submitted that the subsequent agreement to sell by the defendant-respondent proves that he was not ready and willing to perform his part of contract. Therefore, learned Additional District Judge, has grossly erred in denying the decree for specific performance. However, learned counsel for the appellant does not deny that no such averments were incorporated by the plaintiff in his plaint by seeking amendment of his plaint nor any such argument was raised before the learned Additional District Judge, Yamuna Nagar at Jagadhri on his behalf neither is it so pleaded even in the grounds of the present appeal. There is no such evidence on record to substantiate the said argument raised by learned counsel for the appellant which is otherwise beyond pleadings. There is thus no merit in the abovesaid argument as raised by the learned counsel for the appellant.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may

be involved for consideration in this regular second appeal. Impugned judgement and decree dated 13.03.2018, passed by the learned First Appellate Court, is a well reasoned judgement rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgment and decree dated 13.03.2018 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, is upheld.

Present appeal is, consequently, dismissed with no order as to cost.

13.11.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No