

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

RSA No.6006 of 2017 (O&M)

Date of decision : 29.08.2018

Ramesh Chand and another

...Appellants

Versus

Satya Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are 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 and consequently decree of permanent injunction.

The plaintiffs claimed that the land in dispute was agreed to be sold vide agreement dated 24.12.1997 at the rate of ₹50,000/- per acre and earnest money of ₹74,000/- was paid.

The plaintiffs further claimed that they had paid the additional payment of ₹30,000/-. As per the agreement to sell, a civil suit was pending and the sale deed was to be executed and registered within a period of one month from the date of decision of the case when the plaintiffs have notice of the same. The plaintiffs claimed that the defendants filed an application for partition and on receipt of notice, they came to know that the civil suit

has already been dismissed as withdrawn on 27.03.2004.

The defendants contested the suit and pleaded that the plaintiffs were never ready and willing to perform their part of the contract and no payment was made on 31.01.1998 which was “sine qua non” for execution of the sale deed, as stipulated in the agreement and, therefore, the agreement came to an end. The aforesaid amount was required by defendant No.1 for her marriage. It is further pleaded that legal notice was served on the plaintiffs for cancelling the agreement to sell on 16.04.1998.

Both the Courts after appreciating the evidence have found that payment of ₹30,000/-, as stipulated in the agreement on 31.01.1998, is not proved to have paid by the plaintiffs. Although, the plaintiffs have asserted that they had made the payment, however, no receipt of the aforesaid payment has been produced or proved.

Both the Courts have further taken note of the fact that the notice dated 16.04.1998 cancelling the agreement to sell was duly sent to the plaintiffs by registered post and the postal authorities in spite of the information given to the plaintiffs made a note that after several attempts, the plaintiffs have not come forward to collect the notice, therefore, the Courts draw inference that such reluctance on part of the plaintiffs to receive notice amounts to refusal.

Learned counsel for the appellants submitted that the plaintiffs claimed to be in possession as *gair marusi* who had also prayed for injunction. He submitted that even if the suit for possession by way of specific performance of the agreement to sell was to be dismissed, still the plaintiffs would be entitled to decree for permanent injunction.

It may be noticed that the prayer for permanent injunction was only a consequential prayer made pursuant to a relief of specific performance of the agreement to sell. Once the plaintiffs have not been found entitled to the main relief, the Courts below have rightly held that the plaintiffs are also not entitled to consequential relief.

It may be noticed that the agreement to sell was entered in the year 1997 whereas the present suit was filed on 13.06.2007 i.e. after a period of 9 ½ years.

Keeping in view the aforesaid facts, this Court does not find any merit in the present appeal. However, if the plaintiffs have any other right in the property, they shall be entitled to file a fresh suit, if permitted under law.

In view of the above, the present regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No