

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

RSA No.972 of 2018 (O&M)
Decided on:-February 14, 2018.

Ishwar and another

.....Appellants.

Versus

Khadag Singh.

.....Respondent.

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

Present:- Mr. Ramesh Hooda, Advocate
 for the appellants.

HARI PAL VERMA, J.

The appellant-defendants have filed the present regular second appeal against the judgment and decree dated 08.11.2017 passed by learned Additional District Judge, Karnal, whereby their appeal against the judgment and decree dated 21.11.2014 passed by learned Civil Judge (Senior Division), Karnal, was dismissed.

Briefly stated, the respondent-plaintiff had filed a suit against the appellant-defendants, seeking a decree for specific performance of the agreement to sell dated 23.05.2007. The consequential relief of joint possession and permanent injunction was also sought, inter-alia, on the grounds that the defendants being owners in possession of the land measuring 4 Kanals 0 Marla being 80/1660 share out of total land measuring 83 Kanals 0 Marla, as detailed in para No.1 of the plaint, had agreed to sell it along with right of path, trees and other rights appurtenant thereto in favour of the

plaintiff for a total sale consideration of Rs.7 lakhs on 23.05.2007 in the presence of attesting witnesses. The agreement dated 23.05.2007 was attested by Shri Krishan Lal, Notary Public, Karnal and a sum of Rs.5 lakhs was paid as earnest money to the defendants in the presence of witnesses. A receipt in this regard was duly executed. As per the terms and conditions of the agreement, the target date for execution and registration of sale deed was fixed as 23.09.2007. However, the target date was further extended from 23.09.2017 to 15.02.2008, and then from 15.02.2008 to 27.03.2008 and lastly, from 27.03.2008 to 20.04.2008 with the mutual consent of the parties vide endorsements on the back side of the agreement.

As 20.04.2008 was a holiday, on the next day i.e. 21.04.2008, the plaintiff was ready and willing to perform his part of the contract. Therefore, after due intimation to the defendants, he along with remaining sale consideration and amount of stamp charges etc. reached in the office of Sub Registrar, Karnal. He remained present in the office of Sub Registrar, Karnal but the defendants did not turn up. Thereafter, the plaintiff moved an application accompanying with an affidavit regarding his readiness and willingness to perform his part of the contract before Sub Registrar, Karnal for getting his presence marked. He got his affidavit attested by Executive Magistrate on the same day. Thereafter, the plaintiff approached the defendants a number of times and requested them to perform their part of contract. A legal notice through his counsel was also given to the defendants on 07.07.2008 calling upon the defendants to perform their part of the contract within a period of 15 days from the receipt of date of notice, but

despite receiving the notice, the defendants did not perform their part of the contract. Hence, the suit.

In their joint written statement, the defendants took the preliminary objections of locus-standi; maintainability; suppressing of true and material facts from the Court; estoppel and cause of action etc. On merits, the ownership of the defendants has been admitted. The execution of agreement to sell dated 23.05.2007 in favour of the plaintiff, the target dates from 23.09.2007 to 15.02.2008, from 15.02.2008 to 27.03.2008 and lastly, from 27.03.2008 to 20.04.2008 were also admitted. The target dates were extended at the instance of the plaintiff as he was not ready with the remaining balance sale consideration and necessary expenses required for registration of sale deed.

It was denied that on 21.04.2008, the plaintiff was ready and willing to perform his part of the contract. It was also admitted that on 21.04.2008, the plaintiff came present in the office of Sub Registrar, Karnal, but he was not having the required amount for registration of sale deed etc. and, therefore, he requested the defendants to come present on the next day i.e. on 22.4.2008 for getting the sale deed executed and registered as per the agreement dated 23.05.2007. It was pleaded that the impugned affidavit got attested by the plaintiff is a manipulated document because after an oral agreement between the parties, the plaintiff and defendants were required to come present in the office of Sub Registrar on 22.04.2008. The plaintiff issued a legal notice dated 07.07.2008 after 2½ months of 21.04.2008 and if the plaintiff was having sale consideration and other required expenses on 21.04.2008 and not on 07.07.2008, then he would have served the legal notice

immediately after 21.04.2008. The defendants were willing and ready to perform their part of the contract and it was rather the plaintiff who was not ready and willing to get the sale deed executed and registered on 21.04.2008. The other averments of the plaint were denied and dismissal of the suit was prayed for.

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

1. Whether the defendants entered into an agreement to sell the suit property on 23.05.2007 and received a sum of Rs.5 lakhs as earnest money from the plaintiff? OPP
2. Whether the plaintiff was and still ready and willing to perform his part of contract, but defendants have failed to do so? OPP
3. Whether the plaintiff is entitled to refund of earnest money along with compensation as prayed for? OPP
4. Whether the plaintiff is entitled for a consequential relief of permanent injunction? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD
7. Whether the plaintiff has not come to the court with clean hands. If so, its effect? OPD
8. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD
9. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
10. Whether the present suit is misuse of process of law? OPD
11. Relief.

Vide judgment and decree dated 21.11.2014, learned civil Court decreed the suit of the plaintiff and a decree for specific performance of agreement to sell dated 23.05.2007 qua the suit property was passed in favour of the plaintiff and against the defendants after depositing of remaining sale consideration. The defendants were directed to execute the sale deed within 60 days from the date of the judgment. It was further order that in case the defendants failed to comply the order, in that eventuality, the plaintiff shall be at liberty to get the sale deed registered and executed through process of Court. Further a decree for permanent injunction restraining the defendants from alienating the suit property was passed in favour of the plaintiff and against the defendants.

Aggrieved against the aforesaid judgment and decree dated 21.11.2014 passed by the civil Court, the appellant-defendants preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 08.11.2017.

Still aggrieved, the appellant-defendants have filed the present regular second appeal.

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

- i. Whether the plaintiff has led sufficient evidence to prove his readiness and willingness as per requirement under Section 16(c) of the Specific Relief Act, 1963?
- ii. Whether the findings recorded by both the Courts below are perverse?

Learned counsel for the appellant-defendants has argued that the

findings recorded by the Courts below are contrary to facts and law and, therefore, are liable to be set aside. The respondent-plaintiff had failed to bring on record any documentary evidence to prove his readiness and willingness to perform his part of the contract. It was orally agreed on the request of the plaintiff that the sale deed was to be executed on 22.04.2008 as the plaintiff was not having remaining sale consideration on 21.04.2008. The plaintiff did not show whether he was having the balance amount either in the bank or in cash on the last date fixed for execution of sale deed. Since the date of sale deed was extended three times and there was no defect in the title of the property, it clearly shows that the respondent-plaintiff was unable to arrange the balance amount. Therefore, an adverse inference has to be drawn against the respondent-plaintiff regarding his readiness and willingness to perform his part of the agreement.

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

The ownership of the appellant-defendants over the suit land has duly been proved vide copy of Jamabandi for the year 2003-04 Ex.PX. The execution of the agreement to sell dated 23.05.2007 has been admitted by the appellant-defendants. Similarly, the extension of target date for execution and registration of the sale deeds is also an admitted fact. However, it is the stand of the appellant-defendants that it was the respondent-plaintiff who was not having the balance sale consideration and, therefore, on his request, the target date was extended three times.

Perusal of the impugned judgment dated 21.11.2014 passed by learned trial Court reveals that on 21.04.2008, the respondent-plaintiff along

with remaining sale consideration and other expenses of stamp etc. remained present in the office of Sub Registrar, Karnal. He also got his presence marked by way of his affidavit dated 21.04.2008 attested from Executive Magistrate, Karnal. This fact has duly been proved by the oral evidence of PW3 Surinder Kumar, Clerk in the office of Tehsildar, Karnal. Further, appellant-defendant No.1 Ishwar while appearing in the witness box as DW1 has also admitted in his cross-examination that on 21.04.2008, the respondent-plaintiff remained present in the office of Sub Registrar, Karnal, but they did not get their presence marked in the office of Sub Registrar, Karnal.

The contention of learned counsel for the appellant-defendants that it was orally agreed on the request of the plaintiff that sale deed was to be executed on 22.04.2008 as the plaintiff was not having remaining sale consideration on 21.04.2008, is not trustworthy because when the agreement to sell was reduced into writing and extension of target dates was also written three times, it cannot be presumed that the target date was extended from 21.04.2008 to 22.04.2008 orally.

Further, the argument raised by learned counsel for the appellant-defendants that the respondent-plaintiff has failed to establish his readiness and willingness to perform his part of the contract as he was not having sufficient amount to pay the balance sale consideration, cannot be accepted for the reason that the suit land was agreed to be sold to the respondent-plaintiff for a sum of Rs.7 lakhs and out of which, a major part of the amount i.e. Rs.5 lakhs were already paid by the respondent-plaintiff at the time of execution of the agreement to sell itself. Therefore, the respondent-plaintiff

was required to pay only the remaining amount of Rs.2 lakhs. Thus, the readiness and willingness to perform his part of the contract by the respondent-plaintiff has duly been proved.

Since the respondent-plaintiff has proved his case by leading oral as well as documentary evidence, the main issues No.1 and 2 were rightly answered by the civil Court in favour of the plaintiff and against the defendants. The appeal filed by the defendants 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 21.11.2014 passed by the civil Court as well as the judgment and decree dated 08.11.2017 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

February 14, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No