

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA No.2273 of 2003 (O&M)

Date of decision: 01.02.2019

Baljit Singh

..... Appellant

Versus

Karamvir and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Kiran Bala Jain, Advocate and
Ms. Prabha Shrama, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant a poor farmer is in the appeal against the judgments passed by the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell.

The defendant-appellant is pitted against father of a commission agent which in local language are called Artiyas who normally lend money to the farmers.

In the considered opinion of this Court, the following substantial question of law arise for consideration:-

“Whether the discretion as provided under Section 20 of the Specific Relief Act has been properly exercised by the Courts below or not?”

The execution of the agreement to sell dated 30.04.1987 has been proved. As per agreement to sell, the target date for execution and

registration of the sale deed was fixed after a period of more than two years i.e. 15.06.1989. On 15.06.1989, the plaintiff asserts that he visited the office of the Sub-Registrar along with the balance sale consideration and got his affidavit attested from Executive Magistrate, Bilaspur. On the same day, there is an endorsement on the reverse page of the agreement to sell through which Rs.25,000/- was further paid and the target date for execution and registration of the sale deed has been extended to 28.03.1990. The plaintiff before 28.03.1990 serves a notice on 26.03.1990. On 28.03.1990, the plaintiff once again gets his presence attested from the Executive Magistrate, Bilaspur. The plaintiff filed the present suit for possession by way of specific performance of the agreement to sell on 24.07.1991. Both the Courts have recorded a finding that the payments as recorded in the agreement to sell and endorsement have been proved and execution of the agreement to sell has also been proved. Such being concurrent finding which is not shown to be result of any error does not require interference. However, this Court is of the considered view that the discretionary relief does not deserve to be granted to the plaintiff and he is only entitled to refund of the earnest money along with appropriate rate of interest. The reasons for arriving at such conclusion are as under:-

1. There is an unusual gap of more than two years between the execution of the agreement to sell and the target date for execution and registration of the sale deed particularly in the context of admitted case that the plaintiff is father of a commission agent. The defendant while appearing in evidence has specifically stated that he used to sell his crop and had dealing with the son of the plaintiff a commission agent and there is no cross-examination on that effect. It is the case of the defendant that the son

of the plaintiff is a commission agent who used to get his signatures on various papers.

2. Still further, on 15.06.1989, the plaintiff is showing his presence at Bilaspur and getting his affidavit attested in order to prove his readiness and willingness and on the same day, he signed endorsement on the reverse of the first page paying additional amount of Rs.25,000/- and extended the date for execution and registration of the sale deed. No explanation is forthcoming as at what time he reached Chhchhrauli where and at what time the endorsement was written.

3. Further, there is no reason forthcoming even from the reading of the endorsement dated 15.06.1989 as to why the time was extended for a period of 9 months on payment of further amount of Rs.25,000/-, once the plaintiff was ready and willing to perform his part of contract and was carrying all balance sale considerations which was Rs.60,000/- on that day. Why the date for execution of the sale deed was extended and why the sale deed was not got executed.

4. Still further, the plaintiff even after 28.03.1990 waits for one year and 4 months approximately to file the suit for specific performance of the agreement to sell. Practically, the suit has been filed after more than 4 years from the date of agreement to sell. Had there been any intention to sell or any intention to purchase by the plaintiff, the plaintiff would have filed the suit immediately. It has come in evidence that the plaintiff and his son who is a commission agent are residing in the same house, of course, it has been alleged by the plaintiff that they are having separate portions.

For the reasons recorded above, the judgment and decree passed by the First Appellate Court qua decree for specific performance of

the agreement to sell is set aside and it is substituted by a decree of refund of Rs.45,000/- along with interest @ 10% per annum from the date of institution of the suit till payment.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is partly allowed.

01.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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