

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

R.S.A. No. 3032-2019 (O&M)

Date of decision:- 01.07.2019

Gurcharan Singh and anr.

...Appellants

Versus

Gurnam Singh and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Attri, Advocate
for the appellants.

RITU BAHRI J. (Oral)

The present appeal is directed against judgment and decree dated 30.03.2019 passed by learned Addl. District Judge, Barnala whereby suit filed by respondent No. 1 was partly decreed.

Briefly stating the facts of the case filed by the plaintiff-respondent No. 1 (hereinafter to be referred as 'respondent No. 1') are that he had entered into an agreement to sell dated 12.9.2005 with defendant No. 1 and 2/appellant (hereinafter to be referred as 'the appellants') for sale of land as fully described in four parts in the headnote of the plaint. It was settled between the parties that the sale would be got executed on 30.5.2006. Earnest money of Rs. 7 Lacs was paid on the date of execution of the agreement to sell dated 12.9.2005. The agreement to sell dated 12.9.2005 was scribed by the typist and signed by the parties and witness. Further a sum of Rs. 2 Lacs was paid on 25.9.2005 regarding which endorsement on the back side of agreement to sell dated 12.9.2005 was incorporated. On the stipulated date i.e. 30.5.2006 the plaintiff was present as per agreement to sell dated 12.9.2005 in the office of Sub Registrar for getting executed the

sale deed. However, on 30.5.2006 there was a holiday in the office of Sub Registrar, so, the same could not be executed. Again on 31.5.2006 the plaintiff went to the office of Sub Registrar for getting executed the sale deed but the defendant no.1 and 2 did not turn up, inspite of intimation for getting execution of sale deed, being given by plaintiff. The plaintiff got marked his presence by way of an affidavit on 31.5.2006. It has further been averred that the plaintiff lost the original agreement to sell dated 12.9.2005 on 29.9.2006 regarding which DDR No. 7 dated 2.12.2006 was lodged with the police. It has been averred that plaintiff has always been ready and willing to perform his part of the contract but the defendants no. 1 and 2 had failed to do so. Hence, the present suit.

From pleadings of the parties, following issues were framed:

- 1. Whether the defendant entered into an agreement to sell dated 12.9.05 and on receipt of sale consideration agreed to get the sale deed executed and registered on or before the stipulated period?OPP*
- 2. Whether the plaintiff is always remained ready and willing to perform the part of his contract?OPP*
- 3. Whether the plaintiff is entitled for the relief of possession by way of specific performance of the agreement to sell dated 12.9.2005?OPP*
- 4. Whether plaintiff is entitled to relief of recovery along with interest and damages as prayed for?OPP*
- 5. Whether defendant no. 1 has failed to perform the part of his contract?OPD*
- 6. Whether the suit is not maintainable?OPD1*
- 7. Whether defendants no. 3 to 6 were bonafide purchasers and they transferred their rights of ownership in favour of defendants no. 7 to 9 by executing sale deed dated 5.7.2007? OPD 3 to 6*
- 8. Relief*

The trial Court dismissed the suit of respondent No. 1, keeping in view judgment of Hon'ble the Apex Court in case titled ***Saradamani Kandappan vs Mrs.S.Rajalakshmi & Ors in 2011(4) C.C.C., 271*** in which principles have been laid down for grant of relief of specific performance and in this citation, decision of Constitution Bench of Hon'ble Apex Court in case titled ***Chand Rani vs Kamal Rani, 1993 (Suppl.) C.C.C., 577*** is also discussed and this citation also discussed the law laid down in case titled ***K.S.Vidyanandam & Ors vs Vairavan 1997(1) A.C.J., 423*** and ultimately following principles have been laid down in paras, which are reproduced as under:

- 1. Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed can not be ignored.*
- 2. Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.*
- 3. Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.*

It was held by the trial Court that the suit was not filed by

respondent No. 1 immediately after the breach of the agreement to sell by the appellants because stipulated date fixed for registration of sale deed was 30.05.2006 and the suit was filed on 19.01.2007 after a lapse of six months and during period, no notice was ever served by respondent no. 1 upon appellants. This conduct of respondent No. 1 shows that respondent No. 1 was not ready and willing to perform his part of contract.

However, on appeal, the Appellate Court partly decreed the suit of respondent No. 1 and he was held entitled to the recovery of the earnest money of Rs.9,00,000/- from appellants along with interest @ 9%per annum from date of execution of the agreement dated 12.09.2005 till filing of the present suit and 6% per annum from the date of filing of the suit till realization of the amount.

Heard learned counsel for the appellant.

It is not in dispute that respondent No. 1 marked his presence on 31.05.2006 and appellants have also marked their presence on 29.05.2006 and 31.05.2006, thus, it cannot be said that respondent No. 1 was not ready and willing to perform his part of the contract rather appellants have failed to perform their part of contract. Respondent No. 1 has led sufficient evidence to show that he was present on 31.05.2006 as per affidavit Ex P2 which has been got attested by him on 31.05.2006. Respondent No. 1 has further proved rapat No. 7 dated 02.12.2006 and proved the DDR regarding loss Ex P3. Respondent No. 1 further proved the affidavit regarding his presence before the Sub Registrar, Tapa and he has proved his affidavit Ex P2. The affidavit has been attested by Executive Magistrate, Tapa and he must have seen the original agreement to sell copy

of which is Ex P1. Thus, the existence of Ex P1 stands duly proved.

Accordingly, the impugned judgment of the lower Appellate Court partly decreeing the suit of respondent No. 1 does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

01.07.2019
G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No