

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

**RSA No.5115 of 2016 (O&M)
Date of Decision: 18.07.2019**

Sarwan Singh and others

.....Appellants

Vs

Raj Kumar Uppal

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Veneet Sharma, Advocate
for the appellants.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Chetan Bansal, Advocate and
Mr. Namish Sodhi, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for specific performance.

[2]. Brief facts are that the plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 26.03.2011 executed by the defendants in his favour in respect of three shops constructed over an area measuring 2 *Marlas* 98 feet having defined boundaries as shown in the

headnote of the plaint. In alternative prayer for recovery of Rs.6 lakhs i.e. Rs.3 lakhs earnest money and Rs.3 lakhs as damages equivalent to the earnest money was made. Permanent injunction was also sought restraining the defendants from alienating the suit property except to the plaintiff. Vide the aforesaid agreement to sell defendants agreed to sell three shops to the plaintiff for a total sale consideration of Rs.15,40,000/-. An amount of Rs.3 lakhs was received on the date of execution of agreement to sell in the presence of witnesses. Target date for execution of the sale deed was fixed on 30.05.2011 on receipt of balance sale consideration.

[3]. Execution of agreement to sell has been admitted by the parties. Appellants have raked up the issue of readiness and willingness of the plaintiff by saying that the plaintiff himself was not ready and willing to execute the sale deed on the date fixed. Both the Courts have negated the plea with reference to the evidence on record. During course of arguments, learned counsel for the appellants challenged the judgments and decrees passed by the courts below only on the issue of readiness and willingness of the parties to the litigation.

[4]. Learned counsel for the appellants by referring to testimonies of Pritam Singh as PW-6 and Raj Kumar Uppal as PW-2 (plaintiff) submitted that the factum of readiness and

willingness of the plaintiff cannot be presumed as he had no occasion to visit the Bank for withdrawal of the amount. In view of statement of PW-2, he remained present in the office of Sub-Registrar from 9.00 a.m. to 5.00 p.m. PW-6 Pritam Singh while appearing as plaintiff's witness has testified that the amount of Rs.12,40,000/- was withdrawn by Raj Kumar Uppal from his account vide the cheque bearing No.243723. The plaintiff was personally known to the witness as the witness had visited the shop of the plaintiff. The witness has further clarified that the payment was not made to the plaintiff in his presence. Raj Kumar Uppal had withdrawn the amount from the Bank for purchasing the fertilizer from C.C.C. Limit and amount was withdrawn from cash credit limit.

[5]. By referring to the aforesaid statements, learned counsel further submitted that the plaintiff got the presence marked before the Sub-Registrar on 30.05.2011 but in fact he was not ready with the amount.

[6]. On the other hand, learned Senior counsel for the respondent submitted that it was not necessary that the amount was to be withdrawn by the plaintiff in person since the amount was withdrawn through cheques. Soon after the target date, the amount in question was re-deposited in the said account, when the obligation was not honoured by the defendants. The

defendants were not present before the Sub-Registrar and the affidavits of presence executed by the defendants have been disbelieved by the courts below with reference to the attending circumstances based on many factors. Firstly as per Ex.D-1 dated 30.05.2011 i.e. the affidavit sworn by Sarwan Singh, Major Singh, Dilawar Singh and Amarjit Singh there is no recital of their presence from 9.00 a.m. to 5.00 p.m. in the office of Sub-Registrar. Secondly the date of purchase of affidavits is shown to be 30.05.2011 from Patti. The sale deed was to be executed at Khem Karan, therefore, the affidavit should have been purchased from Khem Karan, particularly when the target date was 23.05.2011 itself and thirdly the suit itself was filed on 06.06.2011 after issuing notice to the defendants. The prompt filing of the suit in itself suggested that the plaintiff was ready and willing to perform his part of obligation. The sale deed has already been executed with the process of the Court, only warrants of possession are to be executed.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. Defendants have admitted the factum of execution of agreement to sell Ex.P-4. There was no dispute regarding ownership of the property. Onus to prove issue No.8 was on the defendants. The only contention of the defendants was that the

plaintiff was not ready with the amount in question and the aforesaid contention was sought to be projected on the basis of statement of plaintiff and PW-6 Pritam Singh. From the perusal of their testimonies, it could not be brought out whether the plaintiff was prevented from taking out the amount from the Bank or he was not present before the Sub-Registrar on 30.05.2011.

[9]. The presence of the plaintiff was verified and certified by the Sub-Registrar, whereas presence of the defendants was on questionable note in view of purchase of affidavit Ex.D-1 from Patti in respect of sale transaction which was to be done at Khem Karan. In the affidavit Ex.D-1, there is no recital whether the defendants were present from 9.00 a.m. to 5.00 p.m. in Tehsil compound. The affidavit was purchased on 30.05.2011 from Patti itself whereas the sale deed was to be executed at Khem Karan.

[10]. Both the Courts have concluded that Rasal Singh with whom the alleged agreement to sell was entered by the defendants was not examined for the reasons best known to them. The factum of availability of funds with the plaintiff on the strength of statement of Pritam Singh (PW-6) Clerk in Punjab National Bank could not be established as the Bank record produced by the witness i.e. Ex.P-9, Ex.P-9/A, Ex.P-10,

Ex.P-11, Ex.P-12 and Ex.P-13 clearly revealed that the plaintiff was having the requisite amount in his account and the same was also withdrawn on the date fixed. Since the obligation could not be met by the defendants, therefore, the said amount was again deposited by the plaintiff on 01.06.2011 vide two separate vouchers which were exhibited as Ex.P-12 and Ex.P-13 on record.

[11]. Both the Courts have also disbelieved the factum of written message dated 31.05.2011 issued by the defendants to the plaintiff for execution and registration of sale deed when defendants themselves failed to appear on 30.05.2011. Defendants have orally approached the plaintiff on 30.05.2011, therefore, it could not understood as to why Kuldeep Singh was preferred for sending the message to the plaintiff. The defendants could have asked production of said letter from the plaintiff.

[12]. Once the execution of agreement to sell is admitted, the grant of specific performance is a normal consequence unless and until a case of hardship is pleaded by the defendants within the parameters of Section 20 of the Specific Relief Act. Defendants have only questioned the readiness and willingness on the part of the plaintiff to honour the obligation arising out of the agreement to sell.

[13]. Both the Courts below have appreciated the evidence on record. Re-appreciation of evidence in Regular Second Appeal cannot be done. The sale deed has already been executed after appointment of Local Commissioner by the Court. Only delivery of possession is left to be given to the decree holder. No question of law worth consideration is involved in this appeal. This appeal is totally devoid of merits and is dismissed as such.

July 18, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No