

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

RSA No.1317 of 2014(O&M)

Date of decision: 31.1.2019

Jagdish Singh @ Jagdish Ram

.....Appellant

VERSUS

Bhagwan Dass and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Naveen Batra, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts to the limited extent that claim for principal relief of specific performance of agreement to sell dated 04.07.2008 has been rejected and alternative relief for recovery of earnest money with interest has been allowed.

The appellant/plaintiff filed the suit on the premise that the respondents/defendants agreed to sell land measuring 19 marlas being half share of land measuring 1 kanal 18 marlas comprising Khasra no.41R/9/2 (0-16), 12/4(1-2) as shown in the jamabandi for the year 2003-04 vide agreement to sell dated 04.07.2008 for sale consideration of Rs.2,28,000/- i.e. Rs.12,000/- per marla. A sum of Rs.1,00,000/- was received towards earnest money in the presence of witnesses and sale deed was agreed to be executed on or before 19.09.2008. The appellant approached the respondents number of times to come present in the office of Sub Registrar

for execution of sale deed on or before 19.09.2008. The respondents requested the plaintiff that they would not come present in the office of Sub Registrar, Nurpur Bedi on 19.09.2008 as they were busy in some domestic work and requested him to fix some other date for execution of the sale deed. The plaintiff approached the defendants many a times to execute the sale deed or to fix the next date for the purpose but they did not pay any heed to his request. It is further averred that the plaintiff always remained ready and willing to perform his part of the agreement but the defendants failed to do so. The plaintiff served legal notice dated 19.03.2009 through his counsel calling upon the respondents to execute the sale deed but did not receive any response. Hence, the suit.

Respondent/defendant No.1 filed the written statement raising preliminary objections inter alia maintainability; locus standi; cause of action; non-joinder and mis-joinder of parties and deficiency of Court fee etc. On merits, it was submitted that no agreement was executed between the parties on 04.07.2008 and the alleged agreement is the result of fraud and misrepresentation. All material averments of the plaint were denied with a prayer for dismissal of the suit.

Defendant No.2 did not file any written statement.

The plaintiff preferred replication and reiterated his stand taken in the plaint while controverting the preliminary objections raised by defendant No.1.

The trial Court framed issues reproduced in para 3 of the judgment.

To prove his case, Jagdish Singh – plaintiff examined himself and Ramesh Chand PW-2 and Gurnaib Singh PW-3. However,

respondents/defendants did not adduce any evidence. The trial Court accepted claim of the plaintiff/appellant that the respondents/defendants agreed to sell the suit land in view of the terms and conditions incorporated in the agreement of sale dated 04.07.2008 Ex.P2 and received earnest money of Rs.1,00,000/- out of sale consideration of Rs.2,28,000/-. However, the Court in view of the its observations recorded in para 12 of the judgment negated plea of the appellant with regard to his readiness and willingness to perform his part of the agreement and as a consequence, the appellant/plaintiff was allowed alternative relief of recovery of earnest money with interest.

The appeal preferred by Jagdish Singh – appellant herein did not find favour with the Additional District Judge, Ropar and findings of the trial Court both in regard to agreement of sale as well as on the aspect of readiness and willingness were affirmed without any variance.

Counsel for the appellant would argue that the Courts below seriously erred and grossly misdirected themselves by rejecting claim of the appellant for specific performance of the agreement to sell. To bring home his contention, it is argued that agreement to sell was executed on 04.07.2008 and sale deed was agreed to be executed on or before 19.09.2008. On the stipulated date, the appellant/plaintiff did not go to the office of concerned Registering Authority on the request made by the respondents on the pretext of their being busy in some domestic exigency, therefore, non-appearance of the appellant in the office of Sub Registrar on 19.09.2008 can neither be construed adversely against the appellant nor can enure to benefit of the respondents who had even dared to raise a plea that the agreement is the result of fraud and misrepresentation but shied

away from appearing in the witness box, therefore, an adverse inference is liable to be drawn against them. It is further argued that as the appellant failed to get sale deed executed by the respondents despite his repeated requests, he served notice dated 19.03.2009 Ex.P3 calling upon the respondents to execute the sale deed but as they did not respond to the notice, the instant suit was instituted in April 2009, approximately six months from the stipulated date for execution of the sale deed and less than a year from the date of agreement to sell on 04.07.2008. It is further argued that as the respondents/defendants did not appear in the witness box, there is no counter to testimony of the appellant that the respondents expressed their inability to be present in the office of Sub Registrar on 19.09.2008 with an assurance to execute the sale deed in near future. The last submission made by counsel is that in case the judgments and decrees passed by the Courts are allowed to sustain as it is, the discretion of the Court would be in favour of the respondents who had raised a patently false plea of agreement being the result of fraud and misrepresentation and did not adduce any evidence to counter case of the appellant/plaintiff.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

At the outset, it is pertinent to note that no written statement was filed by Jagdish Ram – defendant No.2 who is none else but brother of Bhagwan Dass – defendant No.1. Bhagwan Dass denied the agreement of sale with a plea that the same is the result of fraud and misrepresentation. He did not bother to appear in the witness box to counter case of the plaintiff much less to substantiate his plea that any fraud has been practised by the appellant in preparing the agreement of sale. This apart, no such

allegations constituting fraud or misrepresentation have been set forth in the written statement filed by Bhagwan Dass.

The trial Court accepted claim of the appellant/plaintiff that agreement to sell dated 04.07.2008 was executed by respondents/defendants who received the earnest money of Rs.1,00,000/- out of sale consideration of Rs.2,28,000/-. The findings of the trial Court in respect of agreement of sale were never challenged by the respondents/defendants before the first Appellate Court, therefore, the same attained finality between the parties on the basis of judgment passed by the trial Court.

The precise question that invites consideration is whether findings of the Courts negating plea of the appellant with regard to readiness and willingness to perform his part of the agreement are based upon correct appreciation of materials on record or the same suffer from perversity, thus, cannot be allowed to sustain.

Before advertng to findings recorded by the trial Court, it is appropriate to mention that the first Appellate Court has dittoed findings of the trial Court and just reproduced observations recorded in para 12 of the judgment of trial Court, sufficient to show that the Appellate Court has not discharged its obligation qua appreciation of evidence and thereafter to record factual findings being the final Court of fact. In this view of the matter, it can be held that the Appellate Court shirked from its responsibility of appreciating observations of the trial Court in the light of relevant materials on record particularly conduct of the respondents/defendants who are the beneficiary of the discretion exercised by the trial Court by denying specific performance of agreement.

The appellant raised a categoric plea that the defendants/respondents expressed their inability to be present in the office of Sub Registrar on the stipulated date i.e. 19.09.2008 because of some domestic work with an assurance to execute the sale deed in near future. The averments raised in para 5 of the plaint in this regard were answered by defendant No.1 with the plea that question of approaching the defendant does not arise at all. The appellant/plaintiff appeared in the witness box and tendered into evidence his duly sworn affidavit by way of examination in chief wherein he reiterated the averments with regard to his readiness and willingness to perform his part of the agreement and the respondents having expressed their inability to be present in the office of Sub Registrar on 19.09.2008 because of some domestic work. There is no such finding by the Courts that this plea of the appellant gets falsified and belied in view of the facts elicited in cross examination of plaintiff – Jagdish Singh. As a matter of fact, both the Courts have not adverted to testimony of Jagdish Singh @ Jagdish Ram on the aspect of readiness and willingness to perform his part of the agreement. On the contrary, the Courts have misdirected themselves by holding that since the plaintiff/appellant did not get his presence marked in the office of Sub Registrar on 19.09.2008, the same demolishes his plea of being ready and willing to perform his part of the agreement. Since the Courts did not disbelieve the plea raised by the appellant that the respondents expressed their inability to execute the sale deed on 19.09.2008, his appearance or non-appearance in the office of Sub Registrar on 19.09.2008 altogether lost significance in the given circumstances. An adverse view taken by the Courts in this regard is the result of non-application of mind and failure to consider pleadings and

evidence that has material bearing on the aspect of readiness and willingness.

This apart, plea of respondent No.1 that agreement is the result of fraud and misrepresentation has no legs to stand. Respondent No.2 did not file written statement that can be construed as acceptance of allegations raised in the plaint. Once the contesting defendant has denied the agreement of sale, it is otherwise not open for him to contend that the agreement did not fructify due to fault of the plaintiff because of his not being ready and willing to perform his part of the agreement more particularly in the circumstances that suit for specific performance was instituted within a short span of six months from the target date. Moreover, had the appellant been not ready and willing to perform his part of the agreement i.e. payment of balance sale consideration of Rs.1,28,000/- and incurring expenses of registration etc there was no occasion for him to issue legal notice just within six months from the stipulated date and having filed the suit in April 2009 in respect of an agreement dated 04.07.2008 with stipulated date for sale deed to be 19.09.2008.

There is no such material available on record suggestive of the fact that the appellant was not in possession of sufficient funds to discharge his obligation under the agreement or there was some other reason for his not being willing to get the sale deed executed on 19.09.2008 or intervening circumstances from 19.09.2008 to March/April 2009 persuaded the plaintiff to issue a notice calling upon the respondents to execute the sale deed and thereafter institute the suit in April 2009. In this view of the matter, the entire approach of the Courts below in negating claim of the appellant/plaintiff for specific performance of agreement of

sale is nothing short of findings based upon conjectures and surmises, thus, suffer from illegality and perversity.

As has been rightly argued by counsel for the appellant, if findings recorded by the Courts disallowing specific performance are allowed to sustain, it would be putting premium upon misconduct of a litigant who had approached the Court with unclean hands and even failed to appear in the witness box, therefore, invite adverse inference to be drawn against him. Examined from any angle, discretion exercised by the Courts in declining relief of specific performance is neither well-founded nor based upon correct appreciation of factual and legal aspects involved in the case. In the given scenario, findings of the Courts negating plea of readiness and willingness of the appellant/plaintiff to perform his part of the agreement cannot be allowed to sustain and accordingly set aside.

The respondents/defendants have not raised any such plea available under Section 20 of the Specific Relief Act, 1963 against specific performance of agreement of sale. There are no such circumstances available on record on the basis whereof the appellant can be denied relief of specific performance on equitable considerations. That being so, the plaintiff/appellant shall be entitle to principal relief of specific performance of agreement of sale dated 04.07.2008. Resultantly, findings of the Courts on issues No.3, 4 and 6 are modified and issues No.3 and 4 are answered in favour of the appellant and against the respondents and issue No.6 is disposed of having become redundant on the basis of findings on issues No.3 and 4.

In view of what has been discussed hereinbefore, the appeal is allowed. The suit filed by the appellant/plaintiff for specific performance

of agreement to sell dated 04.07.2008 in respect of land measuring 19 marlas, detailed in head-note of the plaint is decreed with costs throughout. The appellant is directed to deposit the balance sale consideration of Rs.1,28,000/- with the trial Court within a period of three months. The respondents are directed to execute the sale deed on the basis of agreement of sale dated 04.07.2008 within a period of one month from the date of deposit of balance sale consideration failing which the appellant shall be entitle to seek recourse to process of execution by filing an appropriate application before the executing Court. In case the appellant fails to deposit the balance sale consideration within the stipulated period, the appeal shall be deemed to be dismissed.

JANUARY 31, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no