

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

RSA-2778-2014(O&M)

Date of decision:-29.3.2019

Man Mohan

...Appellant

Versus

Ghan Shyam Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Shalendra Sharma, Advocate with
Mr.B.S. Tewatia, Advocate
for the appellant.

Mr.Sudhir Aggarwal, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Ghan Shyam had filed a suit against defendant Man Mohan seeking possession by way of specific performance of agreement, on the averments that the defendant had entered into an agreement to sell dated 27.4.2005 with the plaintiff for a total sale consideration of Rs.5 lacs; that the agreement was got registered in the office of Sub-Registrar, Palwal bearing document No.505 dated 27.4.2005; that the plaintiff had paid a sum of Rs.50,000/- to the defendant as part payment/earnest money vide receipt dated 27.4.2005 executed by the defendant in favour of the plaintiff; that the balance sale

consideration amount was to be paid at the time of execution and registration of the sale deed and final date for execution and registration of the sale deed was fixed as 27.10.2005, which was later on extended to 15.11.2005 by mutual consent of both the parties.

According to the plaintiff, he has always been ready and willing to perform his part of contract and is still ready and willing to do so; that as a matter of fact, he had asked the defendant on several occasions to accept the balance sale consideration and execute and get registered the sale deed in his favour, but to no effect; that on 27.10.2005, the plaintiff went to the office of Sub-Registrar, Palwal in the morning; that he was having the balance sale consideration and amount for bearing stamp expenses and he remained present there throughout the day, but the defendant did not turn up; that the plaintiff obtained copy of jamabandi for the year 1998-99, which revealed that the defendant had entered into the agreement to sell with plaintiff for the land more than his share; that he was owner in possession of less land than he had agreed to sell to the plaintiff vide agreement in question; that subsequently by mutual consent of both the parties, in order to get his share corrected in the revenue record, the date for execution and registration qua suit land was extended up to 15.11.2005. According to the plaintiff, he had got his presence recorded in the office of Sub-Registrar, Palwal by getting an affidavit attested on that very date i.e. 27.4.2005; that the plaintiff had reached the office of Sub-Registrar, Palwal on 16.11.2005 as 15.11.2005 was a holiday and that the plaintiff was having with him remaining sale consideration amount and money to bear necessary expenses for purchase

of stamp paper and incurring registration charges; that he waited for defendant during office hours in the office of Sub-Registrar, Palwal on 16.11.2005 but the defendant did not come there intentionally and knowingly; that the plaintiff had served a legal notice upon the defendant through his counsel but to no effect, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, the defendant appeared and filed written statement taking various legal objections challenging the maintainability of the suit in the present form further contenting that the plaintiff was estopped from filing the suit by his own act and conduct; that the plaintiff had no locus standi or cause of action to file the suit. On merits, the defendant admitted that he had entered into agreement to sell with the plaintiff with respect to 13 kanals 8 marlas of land on 27.4.2005 for a sum of Rs.5 lacs and had got the agreement registered with Sub-Registrar, Palwal; that he had received a sum of Rs.50,000/- as earnest money, whereas the balance sale amount was to be paid at the time of execution of the sale deed, however, the defendant denied that the date of execution of sale deed was extended by mutual consent of parties up to 15.11.2005. According to him, the plaintiff was not having sufficient money with him on 27.10.2005 for execution and registration of the sale deed and for paying the balance sale consideration amount and he had asked the defendant to extend the date but the defendant refused to do so, hence agreement dated 27.4.2005 stood cancelled and the earnest money paid stood forfeited; that the defendant denied that plaintiff had gone to the office of Sub-Registrar, Palwal on 27.10.2005 having balance consideration amount and money

for bearing registration and ancillary charges or the defendant did not go there to execute the sale deed; the defendant further denied that date of execution and registration was extended up to 15.11.2005. According to the defendant, on 27.10.2005, the then Chief Minister of the State had visited Hodal Town and Sub-Registrar Palwal was not present in his office on that date but the plaintiff might have succeeded in getting the affidavit attested after the date fixed; that on 27.10.2005 the plaintiff was not having sufficient money for payment of balance sale consideration and this question came up before the defendant and on 27.10.2005 presence of any of the parties was not marked by Sub-Registrar, Palwal. According to the defendant, he had served a notice upon the plaintiff after expiry of the date fixed for execution of the sale deed and as a counter-blast on receipt of that notice, the plaintiff sent alleged notice, which was not received by the defendant. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether defendant entered into an agreement of sale with plaintiff regarding the suit land mentioned in para no.1 of the plaint vide agreement of sell dated 27.4.05 for a sale consideration of Rs.5,00,000/-? OPP.
2. Whether plaintiff paid an amount of Rs.50,000/- as part payment at the time of agreement to sell dated 27.4.2005? OPP.
3. Whether plaintiff is entitled to the decree for possession by way of specific performance of agreement to sell dated 27.4.05? OPP.

4. Whether plaintiff is entitled to the decree for permanent injunction as prayed for on the grounds mentioned in the plaint?
5. Whether plaintiff is entitled to the recovery of earnest money Rs.50,000/- alongwith interest as an alternative relief? OPP.
6. Whether suit is not maintainable in the present form? OPD.
7. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD.
8. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD.
9. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW4 besides examining Gaya Lal as PW1, Ram Kishore as PW2 and Banwari Lal as PW3.

On the other hand, the defendant got his statement recorded as DW2 besides examining Sh.Rohtash Sharma, Advocate as DW1, Sh.Om Parkash Kalra, Manager G.G. Bank, Hodal as DW3(wrongly mentioned as DW2 in the judgment) and Sh.Sunder Lal, Clerk as DW4(wrongly mentioned as DW3 in the judgment).

After hearing learned counsel for the parties, the trial Court decided issues No.1, 2 and 5 in favour of the plaintiff, issues No.3 and 4 against the plaintiff and in favour of defendant, issues No.6 to 8 were not pressed. Resultantly, suit of the plaintiff was decreed partly for recovery of Rs.50,000/- with interest @ 6% per annum from the date of receipt of earnest money from the defendant till realization. This was so done vide judgment and decree dated 7.10.2011.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Palwal, which was assigned to Additional District Judge, Palwal, who vide judgment and decree dated 1.3.2014 accepted the appeal and found that the plaintiff was entitled to execution and registration of the sale deed in his favour after making payment of balance sale consideration to the defendant and the defendant was directed to get executed and registered the sale deed in favour of the plaintiff after receiving the balance sale consideration within two months from the date of judgment i.e. 1.3.2014, failing which, the plaintiff would be at liberty to seek assistance of the Court.

Now it was the turn of the defendant to feel dissatisfied with the judgment and decree passed by Additional District Judge, Palwal and he has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly the impugned judgment and decree passed by Additional District Judge, Palwal be set aside.

On getting notice of regular second appeal, the respondent/plaintiff has appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no illegality or infirmity in the judgment passed by the learned Additional District Judge, Palwal.

Learned Additional District Judge, Palwal rectified the mistake committed by the trial Court in denying the relief of specific performance to the plaintiff. The execution of the agreement to sell in this case is admitted and not disputed by the defendant. In terms of the said

agreement, the final date for execution and registration of the sale deed was fixed as 27.10.2005. As per the case of the plaintiff, he had appeared before Sub Registrar along with the balance sale consideration amount and got marked his presence before him on that day, furnishing affidavit Ex.P2 in that regard, wherein it is clearly mentioned that the plaintiff was having balance sale consideration amount, stamp charges etc. and the defendant had not appeared before Sub-Registrar on that day, therefore the readiness and willingness of the plaintiff to get the sale deed executed on 27.10.2005 clearly comes out to be there. The trial Court fell in error in coming to the conclusion otherwise, whereas learned Additional District Judge, Palwal rightly concluded that readiness and willingness on the part of the plaintiff to get the sale executed was there. If the defendant had appeared before Sub Registrar on 27.10.2005 and he could establish that fact by leading cogent and convincing evidence, then the Court would have been put to task of scrutinizing the evidence minutely as due to whose fault, the transaction could not be completed. But here the defendant has failed to show that he had gone to office of Sub Registrar concerned on 27.10.2005 for the purpose of performing his part of contract i.e. execution of sale deed in favour of plaintiff after acceptance of the remaining consideration amount. It is specific case of the plaintiff that date for execution of sale deed was extended from 27.10.2005 to 15.11.2005 and he had furnished an affidavit dated 16.11.2005 in that regard dilating that since 15.11.2005 was holiday, he had appeared before Sub-Registrar having balance sale consideration amount on 16.11.2005 and got his presence marked there but since defendant did not come

forward, the transaction could not be completed. The First Appellate Court in a proper and appropriate manner considered all the factors while coming to the conclusion that plaintiff has been ready and willing to perform his part of contract and transaction could not mature on account of defendant not coming forward to do his part. For ready reference, the relevant part of discussion is being reproduced as under:

*14. It is settled proposition of law that once plaintiff-appellant has contended that he is ready and willing to perform his part of contract on the alleged date fixed between the parties on the basis of agreement to sell and got marked his presence before Sub Registrar proves his readiness and willingness and at this stage court is not to see whether he was having the total money of consideration or not, but it was incumbent upon the plaintiff-appellant to get executed sale deed after obtaining the whole money before Sub Registrar and appearance before Sub Registrar and getting marked his presence on the fixed date proves the readiness and willingness of the plaintiff-appellant has did by the appellant-plaintiff by marking his presence before office of Sub Registrar as per affidavit Ex.P-2 and affidavit Ex.P-3. Reliance can be placed upon the law laid down in **Ram Singh Versus Satbir and others, 2006(4) RCR (Civil) 166, 2009(3) PLR 287** and **2009(4) CCC 429**. Reliance can also be placed upon the law laid down in **Ram Singh Versus Satbir and others, 2006(4) RCR(Civil) 166. 2009(3) PLR***

287 and 2009(4) CCC 429. It is also settled proposition of law that once plaintiff was ready to perform his part of contract and was always ready and willing to perform his part of contract, then discretionary relief of grant of specific performance should be in favour of the plaintiff and against the defendant as held by our own Hon'ble High Court in Abdul Sattar and others Versus Pitamber Singh, 2008(3) RCR(Civil) 424, 2008(3) PLR 720, 2008(3) CCC 582 and 2008(4) ICC 382.

15. All other contentions raised by learned counsel for respondent-defendant that he has not mentioned the factum of readiness and willingness in the plaint itself, because para no.3 of the plaint very much proves that this fact has been very much mentioned by the plaintiff-appellant and this para no.3 has also been established and proved by leading cogent and convincing evidence at the instance of plaintiff-appellant by examining PW-1 Gaya Lal, PW2 Ram Avtar and PW3 Banwari Lal, who all corroborated the version of the plaintiff-appellant. All the attesting witnesses of agreement to sell have proved and corroborated the version of plaintiff and affidavits Ex.P2 and Ex.P3 have also been corroborated and proved this fact that plaintiff-appellant was always ready and willing to perform his part of the agreement and lower Court has wrongly assessed the evidence led by the plaintiff-appellant and has given findings on issues no.1 to 5. Learned

lower Court has wrongly opined that the plaintiff was not having money to be paid to the defendant for getting registered sale deed or plaintiff had not purchased the stamps for getting executed the sale deed, because it was prerogative of the plaintiff-appellant to purchase stamp paper etc. only on the arrival of defendant, who did not appear before Sub Registrar on the alleged date of execution and registration of sale deed i.e. 27.10.2005 and later on 15.11.2005. The lower Court has given findings wrongly and illegally on the basis of presumption only that if the stamps were not purchased then certainly plaintiff-appellant was not having enough money with him. So, learned lower Court has misconceived this fact, rather mere presence before Sub Registrar on the alleged day of execution of sale deed in his favour moved application/affidavit for marking his presence and remaining presence from morning till evening on 22.10.2005 and again on 15.11.2005 in itself are proving that he was always ready and willing to perform his part of contract and lower Court has gravely erred in deciding the issues and partly allowing the suit of the plaintiff-appellant for recovery of earnest money of Rs.50,000/- only.

16. Having heard the rival contentions of both the parties and after perusing the ocular as well as documentary evidence and in view of the law laid down by Hon'ble Apex Court, this court is of the view that the lower Court has

gravely erred in giving findings against plaintiff-appellant, rather plaintiff-appellant has established that respondent-defendant had entered into agreement to sell with the plaintiff-appellant vide agreement to sell dated 27.4.2005 and amount of Rs.50,000/- was also paid by the plaintiff-appellant to the respondent-defendant for execution of sale deed and both the parties entered into agreement to sell and purchase of the land in question. The amount was duly paid and plaintiff-appellant was ready and willing to perform his part of agreement and certainly he has right to get injunction against defendant-respondent. So far as recovery of earnest money is concerned, the lower Court has wrongly given findings on this issue and plaintiff-appellant is entitled for getting registered sale deed on the basis of agreement to sell dated 27.4.2005 after making payment of all the balance sale consideration in question. So, the findings given by the lower Court on issues no.3, 4 & 5 are modified.

17. So far as the findings upon the remaining issues are concerned, it can be concluded that suit of the plaintiff was properly maintainable and plaintiff had got every cause of action and locus standi to file the suit and plaintiff-appellant cannot be estopped from filing the suit by his own act and conduct, rather the conduct of appellant has proved that he is and was willing to perform his part of contract for getting executed and registered sale deed after making payment of

the balance sale consideration and other encumbrances.

Hence, all these issues were decided by the lower Court rightly, because the same were not pressed at the instance of defendant-respondent.

The argument advanced by learned counsel for the appellant that as per version of the plaintiff, he had obtained loan from Gramin Bank, Hodal though Sh.Om Parkash Kalra, Manager of the bank appearing as DW3 had stated that no loan had been sanctioned by the bank and no cheque was issued to him, which goes to show that the plaintiff was not having financial capacity to pay the balance consideration amount. However, learned counsel for the plaintiff has contended that the statement of the plaintiff should be read in totality and a few lines from his statement should not be interpreted in isolation and out of context so as to give different meaning. The plaintiff having sufficient means could very well pay the balance consideration amount.

After hearing the rival contentions, I find that the Court is to see the facts and circumstances of the case and analyze the evidence available on the file in entirety, not interpreting some portion of statement of a witness in isolation. The plaintiff has specifically proved his readiness and willingness to get the sale deed completed and his claim cannot be rejected for want of readiness.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned

judgment passed by the Additional District Judge, Palwal.

The appeal stands dismissed accordingly.

29.3.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No