

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5552 of 2015 (O&M)
Date of Decision: 10.9.2019

Surat Singh

---Appellant

versus

Major Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashish Gupta, Advocate, for the appellant
Mr. K.R.Dhawan, Advocate, for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against the judgment and decree dated 5.8.2015 passed by the Additional District Judge, Moga whereby appeal against judgment and decree dated 11.3.2014 passed by the trial court has been allowed and suit of the respondents-plaintiffs for possession by way of specific performance of agreement of sale dated 6.9.2004 was allowed, in the terms indicated in para 19 of the judgment of First Appellate Court.

The respondents-plaintiffs sought possession by way of specific performance of agreement to sell dated 6.9.2004 in respect of land measuring 62 kanal 7 marlas for total sale consideration of Rs. 15,58,750/- out of which Rs. 12 lakh was paid as earnest money and sale deed was agreed to be executed on 6.9.2005.

As per case set up by the respondents-plaintiffs, they remained present in the office of Sub Registrar concerned on 7.9.2005 as 6.9.2005

was not a day fixed for execution of sale deeds at Dharamkot. It is further averred that respondents-plaintiffs always remained ready and willing to perform their part of the agreement. They issued legal notice dated 7.3.2008 calling upon the appellant to execute the sale deed but he refused to accept it.

The trial court accepted plea of the respondents-plaintiffs in respect of agreement of sale but allowed alternative relief of recovery of Rs. 12 lakh with interest @ 9% per annum from the date of execution of agreement till filing of suit and further @ 9% per annum from the date of filing of suit till date of decree on the principal amount and @ 6% per annum from the date of decree till realization of principal amount, in view of its findings recorded in para 21 of the judgment of said court.

The appellant-defendant did not prefer any appeal against judgment and decree passed by the trial court, therefore, findings of the trial court in respect of agreement of sale attained finality. The appeal preferred by the respondents-plaintiffs asserting their claim for specific performance of the agreement was allowed by the First Appellate Court, in view of observations recorded in para 17 and 18 of the judgment.

The sole submission made by counsel for the appellant is that as per the agreement, the sale deed was to be executed on 6.9.2005. The respondents did not take any steps with effect from 7.9.2005 till 7.3.2008 when they purportedly issued notice calling upon the appellant to execute the sale deed and long silence of almost 2½ years on the part of respondents negates their plea that they always remained ready and willing to perform their part of the agreement i.e. payment of balance sale consideration and incurring expenses of registration etc. to facilitate execution of the sale

deed. It is further submitted that in the given circumstances, the judgment and decree passed by the Court in Appeal may be set aside and that of the trial court allowing alternative relief of recovery with interest may be restored.

Counsel representing the respondents-plaintiffs, on the contrary, would argue that though the trial court, in para 16, has held that technically plaintiffs have succeeded in proving readiness and willingness to get the sale deed executed and accordingly answered issue No. 1(b) in favour of the respondents but still decided issues No. 1 and 3 together and allowed alternative relief of recovery in place of principal relief of specific performance of agreement. It is further argued that error committed by the trial court negating plea of the respondents for specific performance of agreement of sale despite accepting their plea qua agreement of sale and readiness and willingness to perform their part of the agreement, was rightly rectified by the Court in Appeal.

I have heard counsel for the parties, perused the paper book and records.

Counsel for the appellant has fairly conceded that since judgment and decree passed by the trial court was not challenged by the appellant before the Court of District Judge, findings recorded by the trial court in respect of agreement of sale and readiness and willingness attained finality. It is surprising that the trial court, on the one hand had accepted plea of the respondents both in respect of agreement of sale as well readiness and willingness to perform their part of the agreement but still did not allow specific performance of the said agreement without recording any reasons that the present case is covered within the purview of any

contingencies envisaged in Section 20 of the Specific Relief Act, 1963.

However, the court has held in para 17 that suit was filed at the fag end of expiry of limitation on 24.3.2008.

The stipulated date for execution of sale deed was 6.9.2005. It has been proved on record that on 7.9.2005, the respondents appeared in the office of Sub Registrar concerned to get the sale deed executed and registered. Out of total sale consideration of Rs. 15,58,750/-, the respondents had already paid substantial amount of Rs. 12 lakh and remaining amount was to be paid towards balance sale consideration besides incurring expenses of registration etc. There is no plea raised by the appellant that price of the land in question had decreased during the intervening period or the same had increased immediately before filing of the suit. No such fact has been elicited in cross examination of the witnesses of the plaintiffs which could create a slightest doubt in the mind of the court that there were certain reasons that weighed in the mind of respondents-plaintiffs for which they became unwilling to seek specific performance for a period of 2 ½ years since expiry of stipulated date for execution of the sale deed. In the given scenario, the mere fact that suit for specific performance was filed after about 2½ years from the target date *ipso facto* cannot stand in the way of respondents to assert their right for specific performance of agreement of sale. In this view of the matter, I do not find any reason to differ with findings recorded by the First Appellate Court allowing specific performance of agreement of sale in preference to alternative relief of recovery, as was allowed by the trial court.

In view of what has been discussed hereinbefore, finding no

merit, the appeal fails and is accordingly dismissed. Parties are left to bear their own costs.

(Rekha Mittal)
Judge

10.9.2019

PARAMJIT	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes/No