

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

**RSA No.1340 of 2017 (O&M)
Date of Decision.18.03.2019**

Rattan Singh @ Rattan Lal

...Appellant

Vs

Lakhbir Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Bansal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is in regular second appeal against the judgment and decree of the lower Appellate Court whereby appeal preferred by the respondent-defendant against the judgment and decree of the trial Court decreeing the suit has been allowed, resulting into dismissed of the suit.

Plaintiff sought the specific performance of the agreement to sell dated 21.06.2002 in respect of the land measuring 6 kanals 11 marlas agreed to be sold for a total amount of ₹1,70,000/- against payment of ₹1,50,000/- as earnest money. It was alleged that date for execution and registration of the sale deed initially was 21.12.2002 which was extended upto 30.06.2004. Legal notice dated 27.07.2004 was served upon the defendant to appear on 13.08.2004 and suit was filed on 20.05.2007.

Defendant opposed the suit and denied execution of agreement to sell, much less, receipt of earnest money.

Since the parties were at variance, the trial Court framed

the following issues:-

- “1. Whether the plaintiff is entitled to specific performance of agreement to sell dated 21.06.2002 as prayed for? OPP*
- 2. Whether the plaintiff is entitled to recover Rs.1,70,000/- alongwith interest from the defendant as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form as prayed for? OPD*
- 4. Whether the plaintiff has not come to the court with clean hands and has suppressed material facts of the case from this Court as prayed for? OPD*
- 5. Whether the plaintiff has gone no locus standi to file the present suit as prayed for? OPD*
- 6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct as prayed for? OPD*
- 7. Relief.”*

Plaintiff in support of evidence examined his attorney Vinod Kumar as PW1, Gurmail Kaur, Clerk, Tehsil Office, Hoshiarpur as PW2, Balraj Singh, Deed Writer, Tehsil Complex, Hoshiarpur as PW3 but did not examine attesting witnesses whereas defendant did not examine any witness.

The trial Court decreed the suit holding that defendant failed to prove ingredients of fraud vis-à-vis evidence of the plaintiff but the lower Appellate Court as noticed above reversed the finding.

Mr. Sandeep Bansal, learned counsel appearing on behalf of the appellant-plaintiff submitted that even if the attorney did not appear for cross-examination, the fact was that his examination-in-chief was recorded on 11.03.2011 and the next date was fixed as 05.12.2011 but the defendant did not cross-examine and the evidence was closed on 17.02.2014. Defendant did not lead any evidence. The lower Appellate Court noticing the arguments of respective counsel instead of remitting the matter for enabling the parties to lead evidence in support of their respective pleadings dismissed the suit solely on the ground that plaintiff failed to prove execution and registration of the agreement to sell in the absence of cross-examination of PW1, which cannot be fatal to this case.

I am afraid aforementioned argument of Mr. Bansal is not sustainable, for, in suit for specific performance unless and until the person or party, who has participated in the execution of agreement to sell did not appear and his attorney stepped into the witness box, defendant has been deprived of the right to ascertain certain facts with regard to readiness and willingness. The aforementioned view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **Man Kaur (D) through LRs Vs. Hartar Singh Sangha 2010 (10) SCC 512**

Even otherwise, the target date was 30.06.2004 and the legal notice was sent on 27.07.2004 calling the defendant to appear on 13.08.2004 but no reason has come forth for not pursuing the legal remedy, particularly, when the substantial amount had already been parted with as the suit for the sake of repetition was filed in May,

2007. Readiness and willingness is required to be proved during the subsistence of agreement, pendency of the suit, during the course of trial and till disposal of the suit, which was conspicuously absent.

In view of such circumstances, judgment and decree rendered by the lower Appellate Court being the last court of fact and law cannot be said to be faulted, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 18, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No