

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

**RSA No.1847 of 2017 (O&M)
Date of decision:15.05.2019**

Desh Raj and others

... Appellants

Vs.

Rohtash Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Parunjeet Singh, Advocate
for the appellants.

AMIT RAWAL J.

In pursuance to the order dated 09.05.2019, an affidavit has been filed. The same is taken on record.

The present regular second appeal at the instance of appellant-defendants is directed against the concurrent findings of fact and law whereby suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 17.02.2004 in respect of the land measuring 23 kanals 4 marlas owned by the defendants, has been confined to the decree of alternative relief.

The respondent-plaintiff sought the specific performance of the agreement to sell on the premise that appellant-defendants had agreed to sell the land at the rate of Rs.79,00,000/- per acre and received a sum of Rs.18,31,000/- as advance by stipulating the target date for execution and

registration of the sale deed as 16.8.2004 on receipt of 'No Objection Certificate' (NOC) and remaining defendant i.e. Omwati herself and natural guardian of Sonu had also entered into agreement to sell of even date at the same rate and received a sum of Rs.4,59,000/- advance price by fixing the same target date with a condition that necessary permission from the Court regarding sale of share of minor defendant would be taken. The defendants refused to sign the requisite papers for obtaining NOC. The plaintiff attended the office of Sub-Registrar on 16.8.2004 with a balance sale consideration but the defendants did not turn up and avoided to discharge the obligation as per the terms and conditions of the agreement.

The defendants opposed the suit and asserted that plaintiff was not entitled to the discretionary relief as no steps were taken for obtaining the NOC. The alleged affidavit marking the presence was stated to be false and the defendants, vide registered notice dated 18.8.2004 informed the plaintiff, which was also endorsed to the property dealer and gave another opportunity to the plaintiff to perform his part of the contract on 01.09.2004 failing which the contract would stand cancelled and forfeiture of the earnest money but the plaintiff did not appear on 02.09.2004 as did not have the funds to pay the balance sale consideration during the period 10.07.2004 to 02.09.2004. The defendants co-operated with the plaintiff for obtaining the NOC as the mediator i.e. property dealer on 10.07.2004 obtained the requisite signatures/thumb impressions for the purpose of obtaining the NOC, apart from the permission from the guardian judge which was taken on 1.5.2004. The averments qua non/co-operation and non-

appendation of the necessary application were also emphatically denied. Since 01.09.2004 was declared holiday, defendants appeared before the Sub Registrar a day before but the plaintiff did not come forward.

It is a matter of record that during the pendency of the suit, the plaintiff had earlier claimed the specific performance by way of amendment challenging the termination and cancellation of the agreement which was allowed, vide order dated 31.10.2014.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether defendants entered into agreement to sell on 17.02.2004 regarding the suit land with the plaintiff for a sale consideration @ Rs.79,00,000/- per acre?OPP*
- 2. Whether defendants failed to perform their part of contract?OPP*
- 3. Whether the plaintiff has been ready and willing to perform his part of contract throughout?OPP*
- 4. Whether the plaintiff entitled to decree of possession by way of specific performance of the contract?OPP*
- 5. Whether the plaintiff is estopped from filing the present suit by his own act, conduct?OPD*
- 6. Whether the suit is not maintainable in the present form?OPD*
- 7. Whether the plaintiff has no cause of action to file the present suit?OPD*

8. *Whether the suit is bad for non-joinder of necessary parties?OPD*

9. *Relief.:*

Additional issue was framed on 17.11.2014:-

“8-A Whether the relief of declaration incorporated by the plaintiff by way of amendment of plaint is barred by law of limitation? OPD”

The respondent-plaintiff in support of the pleadings examined PW1-Rohtash Singh, plaintiff, PW2-Pradeep Deswal, PW3-Mahender Singh Thakran and PW4-Jagjit Singh, Advocate and brought on record Ex.P1 to Ex.P9, i.e., agreement to sell, receipt of earnest money, affidavit and statement of bank account. On the other hand, defendants examined DW1-Prem Singh, DW2-Azad Singh Clerk, DW3-Mohit Registration Clerk, DW4-Raj Kumar, DW5-Dinesh Kumar and tendered the documents Ex.D1 to Ex.D51 and Mark DX1 to DX5 containing the legal notice, agreements, receipt of earnest money and Land Acquisition Collector notice dated 12.12.2008.

The trial Court noticing all the facts including the provisions of Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975 and as well as the fact that land was acquired ordered for refund of money instead of discretionary relief. The appeal taken by the appellant-defendants and respondent-plaintiff before the Lower Appellate Court was dismissed.

Mr. Ashish Aggarwal, learned senior counsel assisted by Mr. Parunjeet Singh, Advocate appearing on behalf of the appellant-defendants in support of the memorandum of appeal raised the following submissions:-

The judgments and decrees of the Courts below are conjectural and result of some presumption and assumption. The entire thrust had been on account of non-obtaining NOC which was not required as per the notification dated 02.06.2008 issued by Department of Urban Local Bodies, village Tigra fell within the Municipal Limits of Haryana w.e.f. 2.6.2008, in other words, the provisions of Section 7A provided for obtaining the NOC in the area falling within the “Urban Area”, at the relevant point of time whereas the land in dispute is agricultural land.

The defendants, vide legal notice already forfeited the amount which was challenged by way of amendment but the Courts below did not notice the aforementioned fact, forfeiture, in such circumstances, as per the terms and conditions of the agreement was inevitable.

Ex.D3 and Ex.D6, the affidavits dated 31.08.2004 and 02.09.2004 duly proved intention of appellants to perform the part of the contract, thus, the plaintiff did not have the sufficient funds as the prices during that period had fallen down but galloped when the suit was filed in 2006.

The defendants complied with the terms and conditions of the contract by taking the permission to sell the share of minor vide Ex.D49 and Ex.D45. The Land Acquisition Collectors notice dated 12.12.2018 was much later i.e during the pendency of the suit. Vide legal notice Ex.D31, the

agreement was cancelled which carried a presumption of truth under Section 27 of the General Clauses Act.

It is a settled law that once readiness and willingness is conspicuously wanting, the defendants cannot be called upon to return the money and acquisition of land cannot be said to be undue enrichment as allegedly noticed.

The plaintiff failed to show that on 16.08.2004, he was ready with the balance sale consideration. The certain criminal proceedings were initiated at the instance of the plaintiff against the defendants which were quashed by this Court.

In a suit for specific performance, it is not only the conduct of the defendants equally so of the plaintiff has also to be seen. The suit by joining two causes of action on the basis of two agreements to sell was not maintainable.

In support of the aforementioned contention, relied upon the judgment rendered by Andhra Pradesh High Court in **Kota Sreevalli and others vs. Chinni Seetharamaiah and others 2007(5) RCR (Civil) 162** referred to the provisions of Order 2 Rule 3 of Code of Civil Procedure, to contend that different causes of action cannot be permitted to join; **K.S.Vidyanadam Vs. Vairavan 1997(2) RCR (Civil) 312** and that relief of specific performance or equitable relief cannot be granted in case there was total inaction for two and half years and **Azhar Sultana Vs. B.Rajamani and others 2009(2) RCR (Civil) 123**, to submit, though there is no hard

and fast law regarding performance but the reasonable time would depend upon the facts and circumstances of each case and **Saradamani Kandappan Vs. S.Rajalakshmi and others 2011 AIR SC (Civil) 1812**, if the parties do not adhere to the strict compliance of the terms and conditions which also envisaged the cancellation of the agreement or forfeiture, the plaintiff could not have been ordered to seek the refund of earnest money.

I have heard the learned counsel for the appellant-defendants, appraised the impugned judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Aggarwal.

In fact, the legal notice dated 18.08.2004, Ex.P31 was never served upon the plaintiff as the “addressee” was not found. No effort was made by the appellants regarding forfeiture. There is sacrosancy to the terms and conditions of the agreement. If at all, the parties were well aware of the location of the property, whether in urban or agriculture, and still incorporated the condition of obtaining the permission of NOC, though the appellants claimed to have given signed blank papers to the property dealer, it was the plaintiff who wanted to take the permission. In order to prove the aforementioned case, an effort should have been made to examine the witness from the competent authority, i.e. HUDA but no such effort was made.

It is a matter of record that during the pendency of the suit, land has been acquired and the defendants had already been compensated. The

plaintiff was given chance to appear on 01.09.2004 before the sub registrar but did not appear.

It is strange that vide alleged legal notice dated 18.08.2004, defendants cancelled the agreement to sell calling upon the plaintiff to appear on 1.9.2004. Vide Ex.D3 and Ex.D6, affidavits, the alleged presence was marked on 01.09.2004 have not been proved through any witness from the concerned registrar allegedly proving the readiness and willingness.

The argument of Mr. Aggarwal with regard to the focus on the clause of obtaining NOC, is not sustainable, for, both the parties led extensive evidence to that aspect and it cannot be expected that the Court has not rendered the decision thereon.

There is no dispute to the judgments referred to above as facts and circumstances of each and every case on the touchstone of provisions of Section 16(c) of Specific Relief Act have to be examined whether both the parties have actually been ready and willing to perform their part of contract . Since I have already observed that alleged marking of presence of defendants on 31.08.2004 and 01.09.2004 vide Ex.D3 and Ex.D6 have not been proved, thus, mere exhibition of the documents did not dispense with its proof. Even the legal notice for the sake of repetition remained unproved, though as a precautionary measure, the plaintiff sought the amendment at the last stage to avoid the maintainability of the suit in view of the law laid down by the Hon'ble Supreme Court in **I.S.Sikandar (D) by LR vs. K. Subramani and others 2014(1) RCR (Civil) 236.**

The factum of acquisition had categorically been admitted by DW1. In such circumstances, I am of the view that performance of agreement had become incapable and remedy of alternative relief is correct view.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 15, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No