

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

**CM No.4130-C of 2019 and
CM No.6243-C of 2018 in/and
RSA No.2341 of 2018 (O&M)**

Date of Decision: 29.03.2019

SILENDER

...APPELLANT

VERSUS

KISHANPAL

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Parmod Parmar, Advocate for the appellant.

B.S.WALIA, J (Oral)

CM No.4130-C of 2019

Application under Section 151 CPC has been filed for early hearing of the appeal.

For the reasons as are mentioned in the application, the same is **allowed**. The date of hearing of the appeal is preponed from 24.07.2019 to today, itself.

CM No.6243-C of 2018

Applicant-appellant is permitted to make good the deficiency in Court fee. Application stands disposed of.

RSA No.2341 of 2018

[1] Regular Second Appeal has been filed against judgment and decree dated 05.12.2017, passed by the Court of Shri Ashwani Kumar,

learned Additional District Judge, Rohtak, allowing the suit for specific performance of agreement of sale dated 02.07.2012, by setting aside judgment and decree dated 09.08.2017, passed by the Court of Shri Arya Sharma, learned Additional Civil Judge (Senior Division), Meham, whereby the suit filed by the respondent-plaintiff was dismissed.

[2] Brief facts of the case, leading to the instant appeal are that the case of respondent-plaintiff was that appellant-defendant/ Silender, who was owner in possession of agricultural land measuring 4 bighas 16 biswas out of total land measuring 98 bighas 16 biswas situated in the revenue estate of Mokhra Kheri as detailed in paragraph No.1 of the plaint had entered into agreement to sell land measuring 3 bighas 4 biswas to the respondent-plaintiff on 02.07.2012 @ Rs.18,00,000/- per acre against earnest money of Rs.15,00,000/- and in acknowledgment of receipt of earnest money, the appellant-defendant had executed agreement of sale besides receipt. However, since the suit property was mortgaged with the Primary Agriculture and Rural Development Bank, Meham for Rs.13,50,000/-, the appellant-defendant was duty bound to get the suit property redeemed. Target date for execution and registration of sale deed was fixed as 01.07.2013. However, on 01.07.2013, the appellant-defendant extended time for execution of the sale deed by making endorsement on the rear side of agreement of sale and date for execution of registration of the sale deed was extended up to 29.06.2014, which was a holiday, therefore, the respondent-plaintiff attended the office of the Sub Registrar on 30.06.2014 along with balance sale consideration and registration charges etc to perform his part of

the agreement but the appellant-defendant did not turn up to execute the sale deed.

[3] The respondent-plaintiff swore an affidavit in token of his presence, besides taking up the stand that he was always ready and willing to perform his part of the agreement, for which he sent a legal notice on 03.07.2014 but in vain. Therefore, he was constrained to file the civil suit for specific performance of agreement of sale dated 02.07.2012 on payment of balance sale consideration after getting the mortgage property redeemed. Consequential relief of decree for permanent injunction was also sought for restraining the appellant-defendant from alienating or transferring the suit property to any other person.

[4] That in the written statement, the appellant-defendant besides taking preliminary objections with regard to lack of maintainability, lack of *locus standi* etc., resisted the suit primarily on the ground that appellant-defendant never executed agreement of sale dated 02.07.2012 and that the same was the result of fraud and misrepresentation. Therefore, the respondent-plaintiff was not entitled to specific performance of agreement of sale. On the pleadings of the parties, the following issues were framed:-

1. *Whether plaintiff is entitled to a decree of possession as prayed for? OPP*
2. *Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

4. *Whether the plaintiff has no locus standi to file the present suit? OPD*

5. *Whether the plaintiff has not come to the Court with clean hands if so its effect? OPD*

6. *Relief.*

[5] That on the basis of evidence led by the parties, the learned Additional Civil Judge (Senior Division), Meham, decided issue Nos.1 & 2 against the plaintiff, holding that the plaintiff had failed to prove execution of Exhibit P-3, the endorsement regarding extension of time for getting the sale deed registered whereas on 01.07.2013, the appellant-defendant had attended the office of the Sub Registrar to perform his part of the agreement and had sworn affidavit D-1. Learned trial Court held that the respondent-plaintiff had failed to prove that the agreement of sale dated 02.07.2012 was extended and that the respondent-plaintiff never remained ready and willing to perform his part of agreement dated 02.07.2012, besides the respondent-plaintiff had already paid an amount of Rs.15,00,000/- i.e. 83% of the sale consideration and since neither possession was taken by him nor any reason had been shown why the date for execution of sale deed was deferred for a period of one year, therefore, in the circumstances, the respondent-plaintiff was not entitled to get specific performance of agreement of sale dated 02.07.2012. However, issued Nos.3 to 5 were decided against the appellant-defendant by holding that the suit of the respondent-plaintiff was maintainable and that he had the *locus standi* to file the suit.

[6] Aggrieved the respondent-plaintiff filed appeal, which was allowed by the learned Additional District Judge, Rohtak, vide judgment and

decree dated 05.12.2017 by reversing the judgment and decree of the learned trial Court and holding the respondent-plaintiff entitled to the decree for specific performance of agreement to sell dated 02.07.2012. In deciding the appeal, the learned first Appellate Court framed four questions, which are as under:-

- (i) *Whether or not the defendant had executed an agreement of sale dated 2.7.2012, if so its effect?*
- (ii) *Whether or not the defendant has extended the date for execution and registration of sale deed upto 29.6.2014, if so its effect?*
- (iii) *Whether or not the plaintiff was and is still ready and willing to perform his part of the agreement, if so its effect?*
- (iv) *Whether or not the plaintiff is entitled to get specific performance of the agreement to sale?*

[7] Learned counsel for the appellant contended that the learned first Appellate Court erred in not taking into account that the appellant-defendant had not denied the agreement to sell, in fact he had admitted the same and that is why had taken up the stand that he gone to the office of the Sub Tehsildar to execute the sale deed on 01.07.2013 and also got his presence marked and it was the respondent-plaintiff, who due to not having sufficient funds for the execution of the sale deed did not come present in the office of the Sub Registrar on 01.07.2013. Therefore, it was apparent that the absence of the respondent-plaintiff on 01.07.2013 amounted to a breach of contract on his part, consequently entitled the appellant-defendant to forfeit the earnest

money as per the terms & conditions in the agreement to sell. Secondly, the learned first Appellate Court had also failed to take into account that it was not agreement to sell, which was being denied by the appellant but the endorsement (Ex. P-3) with regard to extension of time to execute the agreement to sell and that once it had been established that there was no extension of time, then reversal of the judgment and decree was legally unsustainable.

[8] In the aforementioned background, question No.1 framed by the learned first Appellate Court need not be gone into on account of it being admitted by the appellant that he had executed agreement of sale dated 02.07.2012. Likewise, point No.2 as to whether the appellant-defendant had extended the date for execution registration of sale deed up to 29.06.2014 having been answered in the negative by both the Courts below need not be gone into. However, as far as question Nos.3 and 4 as to whether or not the respondent-plaintiff was and was still ready and willing to perform his part of the agreement and if so its effect besides whether the respondent-plaintiff was entitled to get specific performance are the ones which require consideration.

[9] Admittedly, the appellant-defendant acknowledged having executed agreement to sell dated 02.07.2012, as also of having received Rs.15,00,000/- as earnest money. As per original agreement to sell (Ex.P-1), date for execution and registration of sale deed was 01.07.2013, whereas the suit was filed by the respondent-plaintiff on 06.08.2014 i.e. within three years of the execution of agreement to sell. The appellant-defendant took up the stand in the written statement that he had never executed the agreement to sell dated 02.07.2012. Thus the evidence led by him that on 01.07.2013, he had

attended the office of the Sub Registrar to perform his part of the agreement and moved an application (Ex.D-2) to swear affidavit (Ex.D-1) is beyond pleadings/contradictory to the case as set up in the written statement. The execution of agreement of sale stood proved besides has now categorically been admitted by the appellant-defendant. The respondent-plaintiff served notice (Ex. P-5) on the appellant-defendant calling upon him to perform his part of the agreement, namely to get the mortgaged property redeemed in terms of the agreement to sell by 01.07.2013, whereafter the respondent-plaintiff had agreed to pay the balance sales consideration and get the sale deed executed and registered either in his name or in the name of any person of his choice. The appellant-defendant had mortgaged the land in question with the Primary Agriculture and Rural Development Bank, Meham, as per *jamabandi* for the year 1999-2000 (Ex. P-1) by taking a loan of Rs.13,50,000/- as per report No.140 dated 28.12.2007 but he did not place any document on record to prove that he had got the suit property redeemed, which was the duty of the appellant to do so, prior to 01.07.2013. Unless and until the suit property was got redeemed, respondent-plaintiff could not be compelled to get the sale deed executed and registered on payment of balance sale consideration i.e. approximately Rs.21,00,000/- on 01.07.2013. Reliance by the learned first Appellate Court on the decision of this Court in '**Amar Singh & another** versus **Surjit Kaur & another**', 2014 AIR (P&H) 38, that if the vendor fails to redeem the land from mortgage, he cannot be said to be ready and willing to perform his part of the contract and in such a circumstances, it hardly matters if the vendee did not appear before the Sub Registrar on the date fixed for execution and registration of the sale deed

because the land was still under mortgage and appearance of the vendor before the Sub Registrar on that date would not improve his case and in such circumstances, no adverse inference can be drawn against the vendee is squarely applicable in the facts and circumstances of the case as no evidence whatsoever was led by the appellant-defendant to show that the suit property was got redeemed prior to 01.07.2013 and on said date, it was free from encumbrances and that he had performed his part of the contract i.e. getting the suit property redeemed. In the circumstances, mere attendance of the appellant-defendant before the Sub Registrar on 01.07.2013 and the absence of the respondent-plaintiff before the Sub Registrar on said date is irrelevant. Thus, it is clear that the respondent-plaintiff was ready and willing to perform his part of the contract and on the contrary, it was the appellant-defendant, who was not ready and willing to perform his part of the contract. On execution of agreement of sale, as also of the respondent-plaintiff being ready and willing to perform his part of the agreement and the appellant-defendant not being ready and willing to perform his part of the agreement on account of not having got the suit property redeemed before 01.07.2013, the respondent-plaintiff was rightly held entitled to the decree for specific performance as the respondent-plaintiff had filed the suit within period of limitation i.e. on 06.08.2014 and no case of hardship etc. has been pleaded or proved by the appellant-defendant.

[10] The learned first Appellate Court also took into account that the inference drawn by the learned trial Court of 83% of the sale consideration having been paid was factually incorrect as only Rs.15,00,000/- had been paid out of total sale consideration of Rs.36,00,000/- and that in the circumstances

mere non delivery of possession was found to be not a circumstance disentitling the respondent-plaintiff from seeking specific performance of agreement to sell particularly in view of the appellant-defendant having admitted execution of agreement to sell, as also receipt of sale consideration. Thus, to my mind, the reversal by the learned first Appellate Court of the finding of the learned trial Court on issue Nos.1 & 2 was rightly done.

[11] In the circumstances, the reversal of the judgment and decree dated 09.08.2017 by the learned first Appellate Court and decreeing of the suit for specific performance in favour of the respondent-plaintiff does not warrant any interference. No substantial question of law arises. The appeal is bereft of merit and is accordingly, ***dismissed inlimine***.

[12] Since the main case has been dismissed, therefore, all pending applications, if any, are *disposed of*.

(B.S.WALIA)
JUDGE

March 29, 2019
'Rajneesh'

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