

RSA-6419-2017 (O&M)

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

**RSA-6419-2017 (O&M)
Date of decision : 05.03.2019**

Sansar Singh

... Appellant

Versus

Chhailu Ram (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Bhupinder Kaur, Advocate for the appellant.

Ms. J.P. Sharma, Advocate for the respondent/caveator.

AMIT RAWAL, J. (ORAL)

CM-16621-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 4 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-plaintiff No.2 is, in the regular second appeal, against the concurrent findings of fact, whereby the suit for specific performance of agreement to sell dated 23.07.2007, in respect of suit land, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that the plaintiffs had entered into agreement to sell, aforementioned, with the defendants, in respect of land measuring 7 kanals 13 marlas, for a total sale consideration of ₹9,25,000/-, against the payment of ₹2,10,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 22.09.2007, but since the aforesaid day and next day were Saturday and Sunday, the plaintiffs appeared before the Sub-Registrar on 21.09.2007 as well as 24.09.2007 and

RSA-6419-2017 (O&M)

filled the challan form for purchasing the stamp paper. The repeated requests of the plaintiffs for performing the part of the agreement to sell, did not yield any positive result, resulting into, issuance of legal notice dated 03.09.2010 and filing of the suit on 21.09.2010.

The defendant contested the suit and admitted the agreement to sell, but stated that there was no intention to sell the land, but as security for the purpose of obtaining the loan, which had already been paid back.

During the pendency of the suit, on 13.12.2012, plaintiff No.1 submitted an application and suit qua him was withdrawn and the reason given in the application was that he had taken back the entire loan and nothing was due.

In support of the aforementioned pleadings, plaintiff examined eight witnesses and brought on record Ex.PA, Mark PA and Mark PB i.e. Jamabandi for the year 2003-04, sale deed dated 02.03.2006 and mutation. On the other hands, the defendant examined four witnesses and tendered in evidence Ex.D1 to Ex.D4 i.e. Mutation, jamabandi for the year 2013-14, death certificate.

Ms. Bhupinder Kaur, learned counsel appearing on behalf of the appellant-plaintiff No.2 submitted that the suit was filed within a period of limitation and could not have been rejected being barred by law of limitation. The statement of co-plaintiff cannot deviate the terms and conditions of the agreement to sell and dissuade the Court for not granting the discretionary relief. The testimony of the attesting witnesses reflected the intention of the parties to purchase and sell the property, much less, receipt of earnest money. The categoric pleadings in para 7 of the plaint regarding perpetual requests were not emphatically denied. The readiness

RSA-6419-2017 (O&M)

and willingness cannot be said to be wanting.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, statement of plaintiff No.1 revealed that he had taken the entire amount alleged to have paid as earnest money i.e. ₹2,10,0000/-. If at all, there was a dispute, it was a case of settlement amongst the co-plaintiffs. For the reasons best known to it, plaintiff No.2 still continued with the suit. On going through the contents of the written statement, perpetual requests were not only denied with emphasis, but the plaintiff remained silent for a period of three years. It is a settled law that the person seeking specific performance of the agreement to sell has to show readiness and willingness from the date of execution of the agreement to sell, during the pendency of the suit, till passing of the decree, which conspicuously remained wanting from September 2007 till September 2010, when the agreement to sell entered as well as the suit was filed. All these factors, if read in cumulative, the plaintiff miserably failed to prove the case as set out in the plaint.

As an upshot of my finding, I do not subscribe to the submissions of Ms. Bhupinder Kaur, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

05.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**