

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

RSA No.220 of 2020(O&M)

Date of decision: 16.1.2020

Ramesh Kumar

.....Appellant

VERSUS

Anurag Sharma

.....Respondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Munish Gupta, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against judgments and decrees passed by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 13.04.2010 was decreed by the trial Court vide judgment and decree dated 16.11.2016. Operative part of the judgment, reads as follows:-

"....suit filed by the plaintiff succeeds and the same is hereby decreed with costs for specific performance of the agreement to sell dated 13.4.2010 Ex.P6 with the direction to defendant No.1 to get executed and registered the Sub-General Power of Attorney, Sale Agreement, Affidavit etc. pertaining to the house in question in terms of the agreement to sell Ex.P6 in favour of the plaintiff or in the name of his nominee or any other person at the instance of plaintiff on receipt of balance sale consideration amount of Rs.15,50,000/- within a period of three months from today, failing which the plaintiff shall be entitled to apply to this Court for execution of said documents

through process of the Court. The expenses for execution and registration of documents shall be borne by the plaintiff as originally agreed..”

The appeal preferred by the appellant/defendant No.1 came out to be unsuccessful as the Appellate Court affirmed the judgment and decree of the trial Court without variance.

There is no dispute that house No.2501/1 (first floor), Sector 44-C Chandigarh was allotted to Smt. Anita by the Chandigarh Housing Board (hereinafter referred to as 'the Board') in 1986. Smt. Anita executed registered General Power of Attorney and Special Power of Attorney in favour of appellant Ramesh Kumar on 27.01.1997 in respect of the property in question. The appellant being attorney of Smt. Anita entered into agreement of sale dated 13.04.2010 for price of Rs.17,50,000/- out of which Rs.2 lakhs were paid towards earnest money. The target date for registration of the sale deed was fixed as 30.12.2010.

The plea of respondent/plaintiff is that as per the agreement, appellant was obligated to deliver vacant possession of suit house to him. The plaintiff visited the house in third week of December 2010 and found that Ishwar Chander, elder brother of defendant No.1 was occupying the house in question. He contacted the appellant but did not receive any satisfactory reply. Thereafter, he served legal notice dated 20.12.2010 asking the appellant to remain present in the office of Sub Registrar, U.T. Chandigarh on 30.12.2010. On 30.12.2010, the plaintiff was ready with balance sale consideration to perform his part of the agreement but by that time defendant did not get the house vacated and as such he was not ready to perform his part of the agreement but still the plaintiff visited the office of Sub Registrar along with balance sale consideration on 30.12.2010 and

waited for the appellant till 5 PM and got his presence marked by way of affidavit duly attested by the Executive Magistrate, Chandigarh. Thereafter, he got served another legal notice dated 15.01.2011 calling upon the appellant to perform his part of the agreement. On receipt of notice, the appellant contacted the plaintiff and sought three months' time to get the house vacated and to complete the transaction by end of April 2011. The appellant neither got the house vacated from his brother nor came forward to perform his part of the agreement. Another legal notice dated 21.04.2011 was issued asking the appellant to come present in the office of Sub Registrar, Chandigarh on 05.05.2011 to complete the transaction. On 05.5.2011, plaintiff remained present in the office of Sub Registrar, U.T. Chandigarh along with balance sale consideration in the form of pay order of Rs.15,50,000/- bearing No.027195 dated 04.05.2011 drawn on Bank of India, Sector 32, Chandigarh in favour of defendant No.1 but the appellant did not come present. It is averred that the respondent/plaintiff always remained ready and willing to perform his part of the agreement but appellant failed to complete his part of the agreement. Hence the suit.

Counsel for the appellant would argue that respondent failed to adduce cogent and convincing evidence with regard to his readiness to perform his part of the agreement namely payment of balance sale consideration of more than Rs.15 lakhs and incurring expenses on registration etc. The respondent in cross examination had deposed that he arranged money from different persons but none of them was examined to prove that he had given money to the respondent for meeting his obligation under the agreement. It is further argued that respondent in his statement had deposed that though the agreement is in his name but the property was

to be purchased in the joint names of Rakesh Sharma, his brother in law, and respondent/plaintiff. It is further argued that Rakesh Sharma was examined as a witness but he had not stated that property was to be purchased in his joint name. It is argued with vehemence that respondent was only creating documentary evidence to be used for the purpose of suit but without having sufficient means to discharge his obligation under the agreement.

Another submission made by counsel is that Anita, owner of the suit property has not been impleaded as a party, therefore, the suit is liable to be dismissed on this score alone.

The appellant is the General and Special Attorney of Smt. Anita in respect of the house in question and the Attorneys have been placed on record. He has not disputed that on the basis of Attorney, he entered into agreement to sell the suit property vide agreement dated 13.04.2010 and received earnest money of Rs.2 lakhs out of total sale consideration of Rs.17,50,000/-. The sale deed was to be executed on or before 30.12.2010.

As per case of the respondent, he had gone to the suit property in 3rd week of December 2010 and found Ishwar Chander, elder brother of the appellant being in occupation of the suit house. He has also raised the plea that he issued legal notice dated 20.12.2010 requesting the appellant to complete his part of the agreement and ensure presence in the office of Sub Registrar, U.T. Chandigarh on 30.12.2010. There is no specific denial with regard to suit property being in occupation of Sh. Ishwar Chander either by way of written statement or challenge to testimony of respondent/plaintiff in this regard.

The respondent has proved that on 30.12.2010, he was present in the office of Sub Registrar, Chandigarh and deposed on oath that he was possessed of sufficient funds to pay balance sale consideration and expenses of registration etc. He stated that he procured Rs.6 lakhs from Vikas Sharma, Rs.5 lakhs from Rakesh Kumar and Rs.3 lakhs from Vishal Sharma, his brothers in law residing in Muzaffarnagar. The appellant failed to produce any evidence that on 30.12.2010, he had gone to the office of Sub Registrar, Chandigarh but the transaction could not fructify for want of funds with the respondent/plaintiff. Rakesh Sharma, one of the brothers in law of the respondent was examined as a witness. Nothing has been put to the witness in cross examination if he had given Rs.5 lakhs to the respondent for payment of balance sale consideration nor was he asked if the house was to be purchased in his joint name. However, he has categorically deposed that he was present on the date of agreement and in the office of Sub Registrar on the stipulated date.

The respondent had raised the plea that subsequent to 30.12.2010, he issued notice dated 15.01.2011 Ex.P10 of which the postal receipts are Ex.P11 and P12. In cross examination of Anurag Sharma, there is no challenge to issuance of notice dated 15.01.2011 whereby the appellant was called upon to execute the sale deed. Another notice dated 21.04.2011 is set up by the respondent/plaintiff and appellant had not disputed receipt of said notice in written statement. However, in cross examination of Anurag Sharma, he was suggested that no notice dated 21.04.2011 was issued. It has been proved on record that on 05.05.2011, the appellant again appeared in the office of Sub Registrar, Chandigarh along with balance sale consideration in the form of pay order bearing No.027195 dated 04.05.2011 drawn on Bank of India, Sector 32,

Chandigarh which was prepared from the account of Rakesh Sharma, brother in law of the respondent though the name has been wrongly mentioned as Vikas Sharma in cross examination of the respondent/plaintiff. Taking into consideration the materials on record, it is difficult to accept contention of the appellant that either the respondent was not ready or willing to perform his part of the agreement i.e. payment of balance sale consideration and incurring expenses of registration etc. That being so, it cannot be held that consistent findings recorded by the Courts on the question of readiness and willingness by the respondent/plaintiff suffer from misreading of evidence or failure to take into consideration any material that has bearing on this aspect of the matter. As such, I do not find any reason to interfere in concurrent findings of the Courts on question of readiness and willingness of the respondent/plaintiff.

Indisputably, the General Power of Attorney given to the appellant has not been revoked by Anita, original allottee of the property in question. The power of attorney was issued in 1997 and agreement was executed in 2010. The appellant got all the powers from the original allottee to deal with the property in question. In the given circumstances, non-impleadment of Anita is of no consequence, as has been so held by the Courts.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

JANUARY 16, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no