

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1409 of 2015 (O&M)

Date of Decision: 28.01.2020

Satish Kumar

... Appellant(s)

Versus

Shish Ram (now deceased) through LRs.

... Respondent(s)

AND

2. Regular Second Appeal No. 2487 of 2015 (O&M)

Satish Kumar

... Appellant(s)

Versus

Hukam Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Gurinder Pal Singh, Advocate
for the appellant.

Mr. Rao Ajender Singh, Advocate
for the respondent.

Anil Kshetarpal, J.

By this judgment, Regular Second Appeal No. 1409 of 2015 and Regular Second Appeal No. 2487 of 2015 shall stand disposed of. The parties to both the appeals are common. In both the cases, two separate suits for specific performance of the agreement to sell, filed by the plaintiff/appellants, have been dismissed by separate judgments of even date by the trial Court as well as by the first Appellate Court.

In Regular Second Appeal No. 1409 of 2015, agreement to sell is with respect to 53 kanals 14 marlas of land, whereas in Regular Second Appeal No. 2487 of 2015, the land is measuring 1 kanal 10 marlas. Learned counsel for the parties also admit that both the appeals can be conveniently disposed of by a common judgment.

Both the appeals have been filed by the plaintiff/appellant against concurrent finding of fact arrived at by both the Courts below dismissing the suit for specific performance of the agreement to sell.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by both the Courts below. In both the cases, agreement to sell is dated 24.08.2006. Both the parties had agreed to get the sale deed executed and registered on 13.09.2006. The sale deed was not registered. The defendant, by serving a notice dated 14.09.2006 on the plaintiff, gave another opportunity to the plaintiff to come forward, execute the sale deed and get the same registered, within a period of 15 days. However, the plaintiff did not come forward. However, he filed suits for specific performance of the agreement to sell on 10.09.2009.

Learned counsel appearing for the appellant has submitted that the sale deed could not be executed and registered as nephew (Sunder Lal) of the defendant had filed a suit. He also appeared before the Sub Registrar on 13.09.2006, informing the Sub Registrar that he has filed a suit. The Sub Registrar, thereafter, did not register the sale deed. On 16.09.2006 limited injunction with respect to alienation of the land comprised in specific khasra numbers out of unpartitioned joint land was granted. On 14.11.2007, the

Civil Court ordered that status quo be maintained by the parties in the suit filed by Sunder Lal. He, hence, submitted that it cannot be held that the plaintiff was not ready and willing to perform his part of the contract. On the other hand, learned counsel for the respondent has drawn attention of the Court to the agreement to sell Ex.PA and submit that only undivided share in the land comprised in joint khewats was agreed to be sold. There was no injunction on sale of unpartitioned share in the joint land. Still the plaintiff did not come forward to execute the sale deed. He further submitted that Sunder Lal has appeared as DW.2 and specifically stated that he was prompted by the plaintiff to file the suit as the plaintiff could not arrange the balance sale consideration. He further submitted that as per the agreement to sell with respect to land measuring 53 kanals 14 marlas the total sale consideration comes to Rs.1,37,60,625/- out of which the amount of ₹ 13,80,000/- was paid as earnest money. Thus, another amount of approximately ₹1,24,00,000/- was payable at the time of execution and registration of sale deed. However, the plaintiff has not produced any documentary evidence to prove the availability of the amount. He, hence, submitted that the findings of both the Courts below are correct.

On analyzing the arguments of learned counsel for the parties, this Court is of the view that there is no substance in the present appeal. No doubt, Sunder Lal had filed an application before the Sub Registrar, however, no evidence is available on the file to support the plea of the plaintiff that the Sub Registrar had refused to execute and register the sale deed.

Still further, the defendant had issued notice to the plaintiff

Ex.DW.3/1 dated 14.09.2006 calling upon the plaintiff to come forward and perform his part of the contract and to appear before the Sub Registrar for that purpose on 20.09.2006. Still, the plaintiff never came forward. The injunction order dated 16.09.2006 did not restrain/injunct the execution and registration of the sale deed as per the agreement to sell. Only limited injunction was granted to Sunder Lal restraining Shish Ram, the defendant in the suit, from selling the land comprised in specific khasra numbers out of unpartitioned land. The agreement to sell is not with respect to land comprised in specific khasra numbers but with respect to an undivided share out of joint land.

Still further, the plaintiff filed suit for specific performance of agreement to sell after a period of approximately three years. The limitation for filing the suit was to come to an end on 19.09.2009, whereas the suit was filed on 10.09.2009. The plaintiff has also not produced any documentary evidence to prove availability of balance sale consideration amounting to ₹ 1,24,00,000/- the amount representing balance payment in one suit.

Keeping in view the aforesaid facts, there is no ground to interference. Hence, both the appeals shall stand dismissed. All the miscellaneous applications, if any, in both the appeals shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 28, 2020
“DK”

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