

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

RSA No.1456-2014(O&M)

Date of Order:19.02.2020.

Mohinder Singh and others

..Appellants

Versus

Raghubir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate, for the appellants.

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Akshay Rawal, Advocate,
for respondent nos.1 to 4 and 6 to 14.

ANIL KSHETARPAL, J(Oral)

The plaintiffs-appellants have filed the present regular second appeal against the findings of fact arrived at by the learned first appellate court.

In fact, learned trial court did not grant relief of possession by way of specific performance of the agreement to sell to the plaintiffs-appellants, however, defendants were directed to refund the amount of earnest money received. It may be noted here that the learned trial court after recording that the plaintiffs were never ready and willing to perform their part of the contract, still chose to order refund of the earnest money.

Learned first appellate court on re-appreciation of the evidence has accepted the appeal and ordered that the amount of Rs.25,00,000/-, the earnest money, stands forfeited.

Execution of the agreement to sell dated 17.05.2003 with respect to land measuring 17 kanals and 19 marlas @ Rs.4600/- per square yard on payment of earnest money of Rs.25,00,000/- out of total sale

consideration of Rs.4,99,560,00/- is not disputed.

As per the agreement to sell, plaintiffs were required to further pay a sum of Rs.25,00,000/- on 15.07.2003. Plaintiffs undisputedly did not pay the amount. Defendants issued notice on 02.08.2003 calling upon the plaintiffs to pay the amount of Rs.25,00,000/- as agreed. Plaintiffs did not pay the amount. Thus, the agreement to sell came to an end and the earnest money stood forfeited as provided in the agreement to sell.

The plaintiffs filed a suit on 06.06.2006. There is no explanation as to why after service of notice dated 02.08.2003, the plaintiffs did not immediately file a suit.

Keeping in view the aforesaid facts, both the courts recorded a finding of fact that the plaintiffs were never ready and willing to perform their part of the contract.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellants has submitted that the defendants have admitted that the possession of the disputed land was never delivered to the plaintiffs till 15.07.2003, therefore, the plaintiffs were justified in not paying the further amount of Rs.25,00,000/- as agreed in the agreement to sell. He further submitted that one of the defendant-Inderbir Singh was a minor and defendants were required to take permission from the Guardian Judge before execution of the sale deed.

On the other hand, learned senior counsel for the respondents has submitted that the delivery of possession of the disputed land was not condition precedent for further payment of Rs.25,00,000/- on 15.07.2003.

He, hence, submitted that it is the plaintiffs, who violated the terms of the agreement and therefore, not entitled to any relief. He further submitted that Inderbir Singh had become major before 12.09.2004, the date fixed for execution and registration of the sale deed. He further submitted that the conduct of the plaintiffs prove that they were never ready and willing to perform their part of the contract.

On analysis of the arguments of learned counsels for the parties, this court is of the considered opinion that there is no substance in the present appeal.

Learned first appellate court has correctly appreciated the facts and evidence available on the file while returning the findings that the plaintiffs were never ready and willing to perform their part of the contract. First appellate court has, in fact, affirmed the finding of the learned trial court in this aspect.

Argument of learned counsel that one of the defendant has admitted the fact that possession of the property was not delivered to the plaintiffs before 15.07.2003, is to be appreciated in proper perspective.

As per the agreement to sell, possession was delivered to the plaintiffs on the day agreement to sell was executed i.e. 17.05.2003.

A careful reading of the agreement to sell proves that delivery of possession was not a condition precedent for further payment of Rs.25,00,000/- as agreed to in the agreement to sell. Still further, plaintiffs did not take any step or call upon the defendants offering to pay the amount of Rs.25,00,000/- as agreed to. Rather, on the other hand, it was the defendants, who served a notice on the plaintiffs, bringing to their notice that on account of non payment of Rs.25,00,000/-, the amount of earnest money

has been forfeited. Plaintiffs took their own time to reply to the notice. In the reply also, the plaintiffs did not offer to pay the amount.

Keeping in view the aforesaid facts, both the courts have correctly found that the plaintiffs were never ready and willing to perform their part of the contract.

As regards contention of learned counsel with regard to minority of Inderbir Singh, it is undisputed that Inderbir Singh, one of the proposed vendor became major on 10.09.2004 i.e. two days before the target date fixed in the agreement to sell for execution and registration of the sale deed. Thus, no permission from the Guardian Judge for execution of the sale deed on 12.09.2004 was required. Still further, application to Guardian Judge was not a condition precedent for further payment of Rs.25,00,000/- on 15.07.2003.

In view therefore, there is no ground to interfere.

Dismissed.

February 19, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No