

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 951 of 2016 (O&M)

Date of Decision: 13.03.2020

Sh. Ram Tirath Singh and Another

... Appellant(s)

Versus

Amrit Lal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Ms. Rakhi Sharma, Advocate
for the appellants.

Mr. Anil Chawla, Advocate
for the respondent.

Anil Kshetarpal, J.

The defendant/appellants have filed the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for specific performance of agreement to sell.

Agreement to sell dated 31.07.2000 is in writing, signed by the plaintiff and the defendants. The total sale consideration agreed to between the parties was ₹ 3,50,000/-, out of which a sum of ₹ 2,65,000/- was paid as earnest money. The plaintiff was already in possession as a tenant. It was recorded in the agreement to sell that the possession has been delivered. Thereafter, against the receipt, another amount of ₹ 25,000/- was paid on 07.05.2001. It is further pleaded case of the plaintiff that on two occasions, an amount of ₹ 20,000/- has further been paid. There was no target date for execution and registration of the sale deed. The plaintiff, after service of notice calling upon the defendants to execute the sale deed, filed the present

suit.

The defendants initially took a stand that there was no agreement to sell and the plaintiff is in possession of the property in dispute as a tenant. However, in subsequent paragraphs of the written statement, the defendants took a stand that the plaintiff has refused to pay an amount of ₹1,50,000/- and therefore, the sale deed could not be executed. It was further pleaded that the agreement to sell is vague.

The learned trial Court, on appreciation of evidence, found that the defendants have taken contradictory stand. The defendants have admitted the execution of the agreement to sell in the notices sent by them to the plaintiff dated 10.07.2003 and 02.08.2001. Both the Courts below, on appreciation of evidence, have come to a conclusion that the plaintiff was always ready and willing to perform his part of the contract and in fact, it was the defendants who were not coming forward to honour 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 and the requisitioned record.

Learned counsel for the appellants has drawn attention of the Court to a notice dated 02.08.2001 served on the plaintiff calling upon him to come and execute the sale deed within a period of 15 days. She, hence, submitted that the plaintiff was never ready and willing.

On the other hand, learned counsel for the respondent has drawn attention of the Court to reply dated 24.08.2001 to the notice (Ex.PW.5/1), wherein the plaintiff has offered to pay balance amount as per

always ready and willing to perform his part of the contract.

Next argument of learned counsel for the appellants is with reference to delay in filing of the suit. In this regard, it is important to notice that there was no target date for execution and registration of the sale deed. The plaintiff has already paid a substantial amount i.e. ₹ 2,65,000/- out of ₹3,50,000/-. He offered to pay the balance amount while replying to the notice (Ex.PW.5/1) in August, 2001 and thereafter, once again served notice on the defendants in 2003. The defendant/appellant who was insisting on the balance payment of ₹ 1,50,000/- which is more than due as per agreement to sell. Hence, there is no fault of the plaintiff.

Keeping in view the aforesaid facts, both the Courts below have correctly found that the plaintiff cannot be non-suited only on the ground of delay, particularly when it stood explained.

In view of above, this Court does not find any good ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 13, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No