

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2915 of 2018 (O&M)

Date of decision: 18.02.2020

Babu Lal

... Appellant

versus

Pankaj Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Chanderhas Yadav, Advocate,
for the appellants.

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ARUN MONGA, J.

CM-7453-C-2018

Application is allowed, as prayed for.

RSA-2915 of 2018

1. The defendant is before this Court in second appeal against the judgments and decrees passed by both the Courts below whereby plaintiff's suit for specific performance of agreement has been partly allowed in his favour by virtue of adverse findings having been returned by the trial Court as well as first Appellate Court.

2. Succinct facts as pleaded are that defendant being owner in possession of suit property i.e. 1 kanal 1 marla, entered into agreement to sell dated 12.02.2015 with the plaintiff for a consideration of Rs. 5,00,000/-. At the time of execution of agreement to sell, defendant received a sum of Rs. 2,00,000/- as earnest money from the plaintiff and target date to execute the sale-deed was fixed on or before 12.03.2015. The plaintiff all along had been ready and willing to get the sale deed executed and remained present

before the Sub Registrar on 12.3.2015 along with the remaining amount of sale consideration. However, defendant did not turn up to execute the sale deed. To prove his bonafide, plaintiff executed an affidavit and got it attested from the Executive Magistrate, Dahina to prove his presence in the premises of Sub Registrar. Subsequently, a legal notice dt 24.3.2015 was issued to the defendant to come present before the Sub Registrar on 21.04.2015, but again defendant did not turn up. Once again plaintiff swore an affidavit and got it attested from the Executive Magistrate, Dahina to prove his presence and bonafide to perform his part of contract. The defendant finally refused to execute and get the sale deed registered. Hence, the suit was filed.

3. The defendant in his written statement, denied averments of the plaintiff and submitted that on 12.3.2015, he was very much present in the office of Sub Registrar from 9:00 am to 5:00 pm but the plaintiff himself did not turn up to perform his contract. The plaintiff having failed to perform his part of the contract was, thus, not entitled to seek specific performance of the agreement. Legal objections were taken.

4. Based on the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether plaintiff is entitled a decree for specific performance of agreement to sell dated 12.2.2015 as prayed for?OPP

2. Whether the present suit is not maintainable in the present form?OPD

3. Whether the plaintiff himself failed to perform his part of contract as per agreement?OPP

4. Whether plaintiff has suppressed material and true facts from the court?OPD

5. Relief.”

5. Both the parties adduced their respective oral and documentary evidence in support of their case and to discharge their respective onus as per issues *ibid*.

6. After analyzing the oral as well as documentary evidence adduced by the parties, the trial Court partly allowed the suit by granting money decree in favour of the plaintiff qua earnest money paid to the defendant. The first Appellate Court upheld the judgment and decree under challenge before it and dismissed the appeal filed by the defendant. Hence, this regular second appeal.

7. I have heard learned counsel for the appellant and have perused the judgments under challenge vis-a-vis the grounds of appeal raised before this Court.

8. Specific performance of an agreement being an equitable relief, it is incumbent on the plaintiff to show his readiness and willingness. In the present case, agreement to sell was drafted by Mr. Ravi Yadav, Advocate who appeared as PW3 and admitted his signatures and seal as a scribe. He also deposed that Rs.2,00,000/- were paid as earnest money by the plaintiff to the defendant in his presence. Even attesting witness of the agreement PW1 Dalbir Singh deposed that earnest money was paid by plaintiff to the defendant in his presence. Defendant failed to impeach the credibility of their deposition. Further, parties had fixed the target date for execution of the sale-deed i.e. 12.03.2015. Both the parties claimed that on that date they were present before the Sub Registrar and marked their respective presence by way of swearing affidavits Ex.P2(plaintiff) and Ex.D2(defendant) respectively. However, subsequent legal notice dated 24.03.2015(Ex.P4) issued by the plaintiff shows that intention of the plaintiff was indeed for

execution of the sale-deed, but it was the defendant who did not want to perform his part of the contract. Strangely both the parties claimed that they were ready and willing to perform their part of the contract and both were present before the Sub Registrar and had purchased the stamp papers for affidavits from the same person namely Ramesh Kumar, Stamp Vendor and yet the sale-deed was not executed. In the entirety of situation, unimpeachable position that emerges is that earnest money was received by the defendant and both the parties being present before the Sub Registrar, the trial Court rightly felt that this was not a case of defendant that he was not ready and willing to perform his part of the agreement and keeping the interest of justice and equity in mind, directed the defendant to refund the earnest money of Rs.2,00,000/- received from the plaintiff. More so, it was rightly felt by the trial Court that both the parties lived in the same village/locality and the agreement to sell pertained to an un-partitioned 21/2794 share of the agricultural land i.e. 1 kanal 1 marla and that too without seeking any specific possession. In such a situation where property is not only un-partitioned, but possession thereof is also uncertain, in all likelihood, it would entail further litigation. The relations between both the parties were not cordial. Furthermore, both the parties admitted before the trial Court that defendant had already taken loan on the suit land which he had promised to clear before execution of the sale-deed, but no proof of clearance of loan was furnished on record in the course of adducing evidence. In totality of situation, plaintiff even though proved his readiness and willingness, but the trial Court felt that specific performance being an equitable relief is to be granted depending on the facts and circumstances of the case and the present case was not of the kind where plaintiff was

entitled to such a relief. Accordingly, the suit was rightly decreed partially by granting alternative relief of money decree. The appellate Court below also arrived at the same conclusion and rightly so.

9. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending applications stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

February 18, 2020

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Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No