

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

RSA-7326-2018 (O&M)

Date of decision : 18.02.2020

Manroj Kumar and others

...Appellants

Versus

Hans Raj (since deceased) through his LRs and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. P.S. Khurana, Advocate for the appellants.

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**ANIL KSHETARPAL, J.**

The plaintiffs-appellants have filed the present Regular Second Appeal against the judgment passed by the learned First Appellate Court setting aside the judgment and decree passed by the learned trial Court.

The plaintiffs had filed a suit for possession by way of specific performance of the agreement to sell dated 22.11.2006 executed by defendant No.1-Hans Raj agreeing to sell Shree Anand Flour Mills constructed over an area measuring 2 kanals 7 marlas. As per the agreement to sell which is not disputed between the parties, the total sale consideration as agreed to between the parties was ₹25,51,000/-, out of which ₹13,01,000/- was paid on various occasions. It may be noted here that the agreement to sell was entered into between Hans Raj-defendant No.1 and Raj Kumar, predecessor-in-interest of the plaintiffs. As per the agreement to sell, the parties had agreed to get the sale deed registered on 05.01.2007. On

the one hand, the case of the plaintiffs is that they are entitled to specific performance of the agreement to sell whereas on the other hand, it is the case of the defendants that Raj Kumar, predecessor-in-interest of the plaintiffs was never ready and willing. It is further pleaded that late Sh. Raj Kumar had further entered into an agreement to sell with Gagandeep and Resham Lal with respect to the suit property on 09.04.2007 and received a sum of ₹12,50,000/- from them. It is further pleaded that pursuant to the aforesaid agreement to sell executed by Raj Kumar in favour of Gagandeep and Resham Lal, Hans Raj had executed and got registered a sale deed in favour of defendant No.3, a firm owned by Resham Lal.

Learned trial Court, after appreciating the evidence, granted the alternative relief of recovery of sum of ₹13,01,000/- against defendant Nos.1 and 2 alongwith interest at the rate of 9% per annum from the date of filing of the suit till the date of judgment alongwith future interest @ 5% per annum from the date of order till its realisation, however, learned First Appellate Court has reversed the aforesaid judgment and decree and ordered that the suit filed by the plaintiffs shall stand dismissed.

This Court has heard learned counsel for the appellants and with his able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has submitted that the amount which was received by late Shri Raj Kumar from Gagandeep and Resham, pursuant to agreement to sell dated 09.04.2007, cannot be adjusted as there was no 'privity of contract' between defendant Nos.1 and 2 with defendant No.3. He further submitted that sale deed executed in favour of

defendant No.3 dated 16.12.2009 does not refer to the agreement to sell dated 09.04.2007 and, therefore, the sale deed in favour of defendant No.3 is not pursuant to the agreement to sell dated 09.04.2007.

On analysis of arguments of learned counsel for the appellants, this Court finds no reason to interfere with the judgment passed by the learned First Appellate Court.

It has been found that Raj Kumar was required to deposit remaining amount i.e. ₹12,50,000/- with the bank to get the property free from encumber. The flour mill referred to above subject matter of agreement to sell, was mortgaged with the bank. Late Sh. Raj Kumar did not deposit the amount upto the target date i.e. 05.01.2007. Defendant No.1, even thereafter, granted opportunity to late Sh. Raj Kumar to deposit the amount vide notice dated 08.01.2007. Raj Kumar admittedly did not deposit the amount. Further, the plaintiffs were required to prove that they were ready and willing to perform their part of the contract. Late Sh. Raj Kumar did not visit the office of the Registrar for getting the sale deed registered alongwith the balance consideration on the target date i.e. 05.01.2007. Hence, the predecessor of the plaintiffs is not proved to be ready and willing to perform his part of the contract.

Still further, Raj Kumar had entered into further agreement to sell in favour of Gagandeep and Resham only on the strength of agreement to sell executed by defendant No.1 in his favour. In that process, Raj Kumar received ₹12,50,000/-. Late Sh. Raj Kumar on 09.04.2007 was not the owner. He was only an agreement holder. In such circumstances, Raj Kumar or his successor-in-interest have no right to file the present suit for specific

performance of the agreement to sell.

Now let us examine the arguments of learned counsel for the appellants.

First argument of the learned counsel for the appellants has no substance because Raj Kumar as noticed above had entered into further agreement to sell on the basis of agreement in his favour by defendant No.1. Therefore, Gagandeep and Resham and Hans Raj-defendant No.1 had privity of contract with each other. It is not in dispute that sale deed was registered by Hans Raj in favour of Resham Lal on receipt of ₹9,00,000/-. Thus, the amount which has been paid as earnest money had been adjusted.

Next argument of learned counsel that the sale deed does not refer to the agreement to sell, would not come to rescue the appellants, particularly, when the facts are crystal clear. Once, this Court as well as First Appellate Court have arrived at a conclusion that the plaintiffs were not ready and willing to perform their part of the contract, the suit has been correctly dismissed by the First Appellate Court.

Hence, there is no ground to interfere.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**18.02.2020**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**