

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-540-2022(O&M)
Date of Order:22.03.2022

NIRMAL SINGH

..Appellant

Versus

GURTEJ SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.M. Munjal, Advocate
for the appellant.

Mr. S.C. Pathela, Advocate
Ms. Kavita Arora, Advocate
for respondents/caveators.

ANIL KSHETARPAL, J(Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Court.

While assailing the correctness of concurrent findings of fact arrived at by the Courts below, the defendant has filed the present Regular Second Appeal.

Some facts are required to be noticed.

The plaintiffs filed a suit for grant of decree of specific performance of the agreement to sell on 09.01.2017. As per the agreement to sell dated 29.07.2016, the defendant agreed to sell the land measuring 23 kanals and 11 marlas at the rate of Rs.15,10,000/- per acre. He received Rs.15,00,000/- as earnest money at the time of execution of the agreement to sell. The sale deed was agreed to be executed on or before 11.11.2016. These facts are not disputed by the defendant.

The plaintiffs claim that he paid an additional amount of Rs.5,00,000/- to the defendant on 12.08.2016, and when he went to the

office of Sub-Registrar on 11.11.2016, the appellant did not attend the office for execution and registration of the sale deed. The plaintiffs, after marking their presence in the office of Sub-Registrar, issued a notice to the defendant on 16.11.2016, but the defendant did not respond. As already noticed, the suit was filed on 09.01.2017.

The defendant did not dispute that an agreement to sell was executed between the parties on receipt of Rs.15,00,000/- as earnest money. However, he asserted that the defendant had in turn agreed to purchase the land measuring 25 kanals and 14 marlas from Anoop Singh and since the plaintiffs did not pay the balance amount on 11.11.2016, therefore, the amount paid by him to Anoop Singh, was forfeited. He further claims that the plaintiffs did not come forward to perform their part of the contract.

Both the Courts as already noticed, decreed the suit.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

Sh. C.M. Munjal, the learned counsel representing the appellant addressed the Court on following points:-

1. There is no evidence of additional payment of Rs.5,00,000/- and in the absence of a receipt, the aforesaid payment is not proved.
2. The plaintiffs did not visit the office of the Joint Sub-Registrar on 11.11.2016.
3. That the plaintiffs were never prepared to pay the balance amount and honour their part of the agreement.

While elaborating, he submits that as per the duty roster, the sale deed was to be registered in the office of the Joint Sub-Registrar on

11.11.2016 and not before the Sub-Registrar. He further points out that on 11.11.2016 as well as on 24.11.2016, the defendant remained present in the office of the Joint Sub-Registrar. He has drawn the attention of the Court to the statement of DW-5 Sh. Surinder Sharma, Naib Tehsildar, in this regard.

Per contra, the learned counsel representing the respondents, who are on caveat, submits that the appellant has failed to make out a case for interference. While drawing the attention of the Court to the findings of the learned trial Court, she contends that it is proved on the file that on 12.08.2016, there was a deposit of Rs.5,00,000/- in the bank account of the defendant. She further submits that there is no evidence that the office of the Joint Sub-Registrar and Sub-Registrar are in the different premises. She submits that as a layman, the plaintiffs visited the office of the Sub-Registrar, who marked their presence. She further contends that on 16.11.2016, the plaintiffs issued notice to the defendant and thereafter, filed the suit within a period of one and a half month. It has further been pointed out that as per the bank account statements of the plaintiffs, they had a balance of Rs.31,38,828/- on 11.11.2016.

As regards the first argument of Sh. C.M. Munjal, the learned counsel representing the appellant, it may be noted here that the plaintiff has proved that he and his wife withdrew a sum of Rs.3,00,000/- from their respective bank accounts. Further, Ex.PW2/A is the bank account statement of the defendant which proves that the defendant deposited Rs.5,00,000/- in his account. Furthermore, it is evident that the defendant was required to get the land, which was agreed to be sold, free from the charge of the bank. It is established on the file that the land was mortgaged with the Axis Bank against a loan of Rs.5,00,000/-. There is no evidence that the defendant

deposited the amount with Axis Bank in order to facilitate the registration of the sale deed.

Moreover, it is evident that the conduct of the plaintiffs prove that they were always ready and willing to perform their part of the contract. On 11.11.2016, he did visit the office of the Sub-Registrar. Thereafter, he issued a notice on 16.11.2016, and filed the suit within a period of one and a half month. In such circumstances, the findings of the Court with regard to the fact that the plaintiffs were always ready and willing to perform their part of the contract, does not require any interference.

Further, it is proved that the conduct of the defendant was not bona fide. He not only took a wrong stand that the amount of Rs.5,00,000/- has not been paid on 12.08.2016, but also concealed the fact that he did not repay the loan.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

March 22nd, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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