

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

109-2

**RSA-186-2021 (O&M)
Decided on : 09.05.2022**

Dr. Harish Vashisht

... Appellant(s)

Versus

S.P. Gupta and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Surinder Mohan Sharma, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

This is the Regular Second Appeal against the concurrent findings recorded by both the Courts below. The learned first Appellate Court vide judgment and decree dated 06.01.2020 upheld the judgment & decree dated 12.02.2018, passed by the Civil Judge (Jr. Divn.), Panchkula, whereby, the suit instituted by the respondents/plaintiffs for seeking relief of symbolic possession by way of specific performance of agreement to sell dated 09.01.2008, was allowed and the appellant/defendant was directed to execute the sale-deed in respect of the suit property in favour of the respondents/plaintiffs.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

Brief facts of the case may be noticed. A suit for possession (symbolic) by way of specific performance in respect of Agreement to Sell dated 09.01.2008 *qua* property i.e. triple storey shop bearing No. 29, situated at main Market Village Abheypur, Industrial Area, Phase-I, Panchkula, measuring 15' x 8' (hereinafter referred to as suit property), was

instituted by the plaintiff. It was pleaded that the defendant after representing himself to be owner of the suit property entered into an Agreement to Sell dated 09.01.2008 (Ex.P18) with the plaintiff. After execution of the aforementioned agreement to sell dated 09.01.2008 (Ex.P18), out of agreed sale consideration of Rs.13,50,000/-, the plaintiffs paid Rs.2,00,000/- vide cheque No.'303035', dated 07.01.2008 to the defendant. It was agreed between the parties that the last date for execution and registration of the sale-deed would be 22nd February, 2008. It was further agreed that in case the defendant failed to perform his part of the agreement to sell, the plaintiffs would get the sale-deed executed and registered in their favour through a Court of law and in case it was the plaintiffs, who failed to perform their part of the contract, then the earnest money paid by them to the defendant would stand forfeited. On 21.02.2008, the plaintiffs made a further payment of Rs.5,25,000/- through cheques to the defendant, on his request, as he was in need of money. On the request of the defendant, the date for execution and registration of sale-deed was extended to 10.03.2008. On 10.03.2008, a further payment of Rs.3,00,000/- was made to the defendant by the plaintiffs and thereafter, with the mutual consent of both the parties, the last date for execution and registration of sale-deed was extended from 10.03.2008 to 17.03.2008. In the meantime, the plaintiffs requested the defendant to hand over the vacant and physical possession of the suit property, as they wanted to start a chemist shop there. The defendant assured the plaintiffs that he would execute the sale-deed in favour of the plaintiffs shortly. A request was made by the plaintiffs to the defendant to at least execute a rent agreement in their favour, so that they could obtain the necessary license for starting their chemist shop from the

authorities concerned, as they were required to furnish the title-deed or a rent agreement with respect to the shop. The defendant then, executed rent agreement dated 09.04.2008 in favour of the plaintiffs. The last date for execution and registration of the sale-deed *qua* the suit property was again extended from 16.04.2008 to 15.05.2008. Even though, the plaintiffs were ready and willing to perform their part of the agreement, the defendant yet again requested for extension of time, as a result, the last date for execution and registration of the sale-deed was extended to 12.11.2008. The plaintiffs, thereafter, requested the defendant time and again to hand over the vacant and physical possession of the suit property, as most of the sale consideration amount already stood received by the defendant, but in vain. On the oral request of the plaintiffs, the defendant handed over the vacant and physical possession of the suit property to the plaintiffs. An acknowledgement of the possession to the said effect was signed by both defendant and the plaintiff No.1. The plaintiffs alleged that despite their willingness and readiness to perform their part of the agreement to sell, since the defendant kept putting off and avoiding the performance of the contract on his part, a complaint was made to the Superintendent of Police against him. The defendant acknowledged before the police that he had received the payment and undertook to execute and register the sale-deed on or before 04.04.2011, or thereafter, as per the convenience of the plaintiffs. An affidavit dated 01.02.2011 (Ex.PW6/2) was executed in the said regard by the defendant. However, on 26.03.2011, the defendant served a legal notice upon the plaintiff, on false and frivolous grounds, in order to usurp the amount of sale consideration paid to him. On 28.04.2011, the plaintiffs went to the office of Sub-Registrar for the execution and registration of

sale-deed along with balance sale consideration and necessary amount for stamp papers etc., but the defendant did not show up. After getting their presence marked by way of an affidavit dated 28.04.2011, in support of their *bona fides*, plaintiffs sent a reply dated 07.06.2011 to the legal notice sent by the defendants. The defendant then filed a false rent petition titled as 'Harish Vs. Gaurav Gupta' before the Rent Controller, Panchkula. The plaintiffs alleged that not only had the defendant played a fraud upon them regarding which a criminal complaint was also filed, but he had also failed to perform his part of the agreement to sell and thus, cheated them by not executing the sale-deed, even after receiving Rs.10,75,000/-, out of the total sale consideration of Rs.13,50,000/-.

The defendant while filing his written statement submitted that he was the owner of the suit property. He further admitted the execution of the agreement to sell dated 09.01.2008, between the plaintiffs and him, for a total sale consideration of Rs. 13,50,000/- and also admitted receiving Rs.10,25,000/- from the plaintiffs. It was submitted that an amount of Rs.3,25,000/- was still outstanding. While controverting the averments made by the plaintiffs in the plaint, he asserted that the date of the execution of the sale-deed had been repeatedly extended on the request of the plaintiffs. He submitted that a legal notice dated 27.04.2009 was also served upon them by him in the said regard. It was further submitted that on 26.03.2011, while serving a notice upon the plaintiffs, with a request to execute the sale-deed on payment of the balance sale consideration of Rs.3,25,000/-, they were duly informed that in case they failed to do so, then the sale consideration received by him would stand forfeited and ejection proceedings would be initiated against them. It was also asserted that

plaintiff No.2 had in fact, taken the ground floor of the suit property on rent at Rs.1,000/- p.m. regarding which, a rent agreement had been executed between the parties on 09.04.2008. Pursuant thereto, the first and the second floors of the suit property were also rented out to plaintiff No.2 in June, 2008, for which, the rent of the demised premises i.e. triple storey shop No.29 was fixed at Rs.3000/- p.m. The defendant alleged that the demised premises was required by him for running an educational institute, since his present premises i.e. second floor of SCO No.6, Sector 11, Panchkula, which he had taken on rent, was unsuitable. The defendant alleged that since the plaintiffs had failed to pay arrears of rent to him and vacate the premises in question, despite repeated requests, for which an ejectment petition too had been filed by him, they with a dishonest intention to blackmail the defendant, had instituted the civil suit in question, as they were unwilling and not ready to perform their part of the agreement to sell.

On the basis of the pleadings and other evidence led, the trial Court decreed the suit in favour of the plaintiffs by directing the defendant to execute the sale-deed in respect of the suit property within a period of two months from the date of its order subject to deposit of the balance sale consideration amount of Rs.3,25,000/- by the plaintiffs in favour of the defendant. The appeal preferred by the defendant to impugn the judgment & decree of the trial Court was dismissed by the lower Appellate Court. Thus, this appeal.

Learned counsel for the appellant-defendant has vehemently argued that no doubt agreement to sell (Ex.P7/1), dated 09.01.2008 was indeed executed with regard to the suit property for a total consideration of Rs.13,50,000/-, out of which he had received Rs.10,25,000/- from the

plaintiffs, however, it was on the request of the respondents-plaintiffs that the last date for execution of the sale-deed, which was initially fixed for 22.02.2008 was repeatedly extended. Learned counsel submits that the Courts below failed to appreciate that it was the plaintiffs, who were unwilling and not ready to perform their part of the contract, as they had failed to pay the balance sale consideration of Rs.3,25,000/-. Learned counsel further submits that the legal notice (Ex.R1) sent in 2009 by the defendant, further lent credence to the plaintiffs not being ready and willing to perform their part of the contract, as even thereafter, they failed to make payment of the balance amount of sale consideration to the defendant. Learned counsel still further submits that the defendant had filed an ejectment petition against the respondents-plaintiffs for their ejectment on grounds of non-payment and rent and personal necessity from the demised premises/suit property, which was allowed by the Rent Controller vide judgment dated 29.01.2015 though set-aside by the Appellate Authority. However, a Civil Revision had been filed before this Court, which was pending adjudication. Learned counsel submits that since the plaintiffs had failed to perform their part of the contract in respect of the agreement to sell dated 09.01.2008 and they were in possession of the demised premises/suit property, even thereafter, their status was that of a tenant. Hence, the suit for specific performance filed by the plaintiffs was not maintainable in the aforementioned facts and circumstances.

I have heard learned counsel for the appellant-defendant and perused the relevant material on record.

Before proceeding further, it would be relevant to mention that Civil Suit No.656 of 2013 instituted by the plaintiffs against the defendant

with respect to the suit property was initially dismissed vide judgment and decree dated 15.01.2015 by the trial Court. However, in the Civil Appeal No.63 of 2015, preferred by the plaintiffs to impugn the aforementioned dismissal, the lower appellate Court set aside the judgment and decree dated 15.01.2015 and remanded the case back to the trial Court for framing of an additional issue, wherein, the trial Court was directed to give findings on all the issues along with the following additional issue:-

“4-A. Whether the defendant has rightly terminated the impugned agreement to sell and has rightly forfeited the earnest money?”

It has been the consistent stand of the respondents-plaintiffs that they wanted to start a chemist shop in the suit property. Hence, vide Ex.P7/9, the possession of the suit property was delivered to them by the appellant-defendant. It has not been disputed rather it stands admitted by the appellant-defendant that he had received an amount of Rs.10,25,000/- out of the total consideration of Rs.13,50,000/-. Ex.P7/1, which is the agreement to sell dated 09.01.2008, and the endorsements Ex. P-7/2 to P-7/8 also reflect the receipt of the amount of Rs.10,25,000/- as well as the last date for full & final payment for execution of sale-deed to be 22.02.2008. Still further, the date of execution of the sale-deed having been extended to 10.03.2008 and thereafter to 17.03.2008 and then finally to 15.05.2008 also stands duly reflected on the said agreement to sell. The question as to whether it was the respondents-plaintiffs, who were not willing to perform their part of the contract/agreement by paying the balance sale consideration or was it the appellant-defendant, on whose requests the execution of the sale-deed *qua* the suit property was extended from time to time, would have

to be appreciated and inferred from the following sequence of events:-

- I. Ex.PW6/1 is a complaint, which was moved by the respondents-plaintiffs before the Superintendent of Police, Panchkula, against the defendant for not getting the sale-deed executed despite receiving almost 80% of the entire sale consideration agreed between the parties.
- II. Vide affidavit dated 01.02.2011 (Ex.PW6/2), the defendant deposed that it was due to some unavoidable circumstances that he was unable to get the sale-deed executed in favour of the plaintiffs. In this affidavit, he gave an undertaking to get the sale-deed executed in favour of the plaintiffs on or before 04.04.2011 or as per the convenience of the plaintiffs.
- III. The defendant did not dispute the factum of a complaint by way of an application (Ex.PW6/1), having been made against him by plaintiffs to the Superintendent of Police, Panchkula. He also admitted that Ex.PW6/2 (attested copy of the affidavit of the defendant), bears his signatures and had been given by him at the police station pursuant to the aforesaid complaint (Ex.PW6/1).

It would be pertinent to observe that in Ex.PW6/2, the defendant conceded that it was because of him that the sale-deed dated 09.01.2008 could not be executed.
- IV. No doubt, it is the case of the defendant that he sent a notice dated 26.03.2011 (Ex.R3), to the plaintiffs for getting the sale-deed executed and registered in their

favour after making the payment of the balance sale consideration of Rs.3,25,000/- on or before 28.04.2011, else the entire sale consideration of Rs.10,25,000/- paid by the plaintiffs would be forfeited. However, it would be relevant to mention that as per the affidavit of the defendant dated 01.02.2011 (Ex.PW6/2), it was undertaken by him that the sale-deed would be executed in favour of the plaintiffs “on or before 04.04.2011 or after this date as convenient to the purchasers”.

In the circumstances, when the defendant himself had categorically given an undertaking to execute the sale-deed in the aforementioned terms and also admitted receiving Rs.10,25,000/- out of total sale consideration of Rs.13,50,000/-, his contention that the agreement to sell in question would be deemed to have been automatically terminated as per the legal notice (Ex.R3) sent to the plaintiffs, is bereft of any merit and deserves to be rejected.

- V. It may also be pointed out that affidavit dated 28.04.2011 (Ex.P7/10) was executed by the plaintiffs and duly attested by the Executive Magistrate on 28.04.2011 at 05:00 P.M., for marking their presence in the office of the Sub-Registrar i.e. on the date which was fixed for the execution of the sale-deed, as per the defendant's legal notice dated 26.09.2011 (Ex.R3) sent to them. The learned counsel for the defendant though vehemently

argued that the affidavit was bogus, because the year of purchase of the stamp paper was not mentioned. However, PW-9/Ashok Kumar, stamp vendor, produced the records regarding the sale of stamp paper(Ex.P7/10), which reflects entries regarding purchase of stamp paper by the plaintiff – S.P. Gupta. Still further, the plaintiffs placed on record Ex.P41, their reply dated 07.06.2011 to the legal notice (Ex.R3) sent by the defendant, wherein, the plaintiffs reiterated that they remained present in the office of Sub-Registrar on 28.04.2011, however, since the defendant failed to turn up to get the sale-deed executed and registered, they got their presence duly marked by way of an affidavit in the office of Sub-Registrar on 28.04.2011.

As an upshot to the above discussion, once the plaintiffs had paid 80% of the entire sale-consideration to the defendants and were ready to pay the remaining sale consideration coupled with the fact that they had presented themselves in the office of Sub-Registrar on 28.04.2011, for getting the sale-deed registered and executed, they were indeed ready and willing to perform their part of the agreement to sell.

Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal, being devoid of

merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 09, 2022
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*