

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

146

RSA-1252-2021(O&M)
Date of Order: 18.05.2022

BASANT RAM (DIED) THROUGH LRS AND ORS

..Appellants

Versus

SUKHBIR SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mukand Gupta, Advocate
for the appellants.

Mr. Sunil Kr. Chadha, Sr. Advocate
with Mr. Akshay Chadha, Advocate
Mr. Tara Dutt, Advocate
for respondent No.1 to 3.

ANIL KSHETARPAL, J(Oral)

The defendants in a suit for possession by way of specific performance of the agreement to sell assail the concurrent findings of fact arrived at by the Courts below while decreeing the suit. The plaintiffs filed the suit claiming that the defendants have entered into an agreement to sell with respect to the property bearing No.38-A, Rani Ka Bagh, Amritsar, measuring 513.33 square yards on 14.04.2007, for a total sale consideration of Rs.1,25,76,585/-. As per the agreement to sell which is in writing signed by the parties, earnest money to the tune of Rs.25,00,000/- was paid and the sale deed was to be executed and registered on or before 16.08.2007. The plaintiff No.1 visited the office of the Sub-Registrar, however, the defendants did not come forward. He got an affidavit attested from the Sub-Registrar in order to prove his presence. It was stated in the affidavit that he is prepared to execute the sale deed on payment of balance amount.

Subsequently, it came to the notice that the alienation of the property has been stayed in a suit filed by Sh. Harjeet Singh, who claim an oral agreement to sell by the defendants. After some time, the order of injunction was modified, however, it was vacated only on 06.06.2008 by the First Appellate Court.

The plaintiff, thereafter, served a notice to the defendants to perform their part of the contract. In fact, one of the defendants Ms. Sweeti Bains on receipt of Rs.9,00,000/- executed irrevocable power of attorney and other documents in favour of Sh. Anoop Singh, one of the plaintiffs. The defendants rather than replying to the notice dated 01.04.2010, filed a caveat. The plaintiff filed the suit claiming that he was always ready and willing to perform their part of the contract. The defendants No.1 to 4 denied execution of the agreement to sell and claim that the plaintiffs have committed a fraud. The defendant No.5 (Ms. Sweeti Bains) while filing a separate written statement, denied the execution of the General Power of Attorney, Special Power of Attorney and the Will. On appreciation of evidence, the Courts have decreed the suit.

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

The only contention raised by the learned counsel representing the appellants is that the plaintiffs failed to prove their readiness and willingness as they failed to prove their financial capacity as on 16.08.2007.

Per contra, the learned counsel representing the respondents has submitted that in fact when Sh. Sukhbir Singh appeared as PW-2, the learned counsel representing the defendants did not cross-examine him on that aspect. He further submits that Sh. Sukhbir Singh has produced on

record various documents which proves that he is the owner of agricultural land of a large extent, in and around the city of Amritsar. He further submits that Sh. Sukhbir Singh is also Director in a company M/s Amritsar Pulp and Board Mills Pvt. Ltd. He further submits that the plaintiff has produced record from Axis Bank proving that the cash credit limit to the tune of Rs.1,50,00,000/- has been sanctioned in favour of his wife.

The learned counsel representing the appellant contends that the aforesaid cash credit limit was sanctioned only in the year 2011.

On a repeated Court question, the learned counsel representing the appellant failed to draw the attention of the Court to any such question which was put to the plaintiff Sh. Sukhbir Singh when he appeared in evidence, in this regard. If the defendants wishes to question the financial capacity of a party to the suit, at least he is required to seek explanation from the party when he appeared in evidence. The plaintiff has specifically stated in his affidavit dated 16.08.2007, the plaint filed in the suit as well as in his examination-in-chief that he was always ready and willing to perform his part of the contract. He has proved that he is a man of means. Further, he has proved that Rs.34,00,000/- out of Rs.1,25,76,585/- has already been paid. The decree passed is conditional. Both the Courts have recorded concurrent findings that he was always ready and willing to perform his part of contract. Section 16(c) specifically provides that plaintiff is not required to tender the amount in cash so as to prove his readiness and willingness. In other words, there is no such pre-condition to bring the entire amount in cash.

The civil suit is required to be decided on the basis of preponderance of evidence.

Both the Courts have already appreciated the evidence and

passed the decree in absence of any perversity in the same, this Court is not expected to interfere.

Hence, no ground to interfere is made out.

Dismissed.

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

May 18th, 2022

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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>