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

**RSA-5451-2019 (O&M)
Reserved on : 14.07.2022
Date of decision : 21.07.2022**

Chamkaur Singh

.....Appellant

versus

Mohinder Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Bhatti, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred against the judgments and decrees passed by both the Courts below. The Trial Court had decreed the suit of plaintiff-respondent No.1 vide judgment and decree dated 02.12.2016. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant No.1-appellant, which was dismissed vide judgment and decree dated 23.07.2019. Aggrieved by the concurrent findings rendered by the Courts below, the present regular second appeal has been preferred by the defendant No.1-appellant.

The undisputed facts in the present case are that on 31.10.2009 the parties entered into an agreement to sell qua 15 Kanals of land @ Rs.14,00,000/- per acre and defendant No.1-appellant received an amount of Rs.9,00,000/- as earnest money. The target date set was 30.12.2009. Admittedly, another sum of Rs.4,00,000/- was received by the defendant No.1-appellant as part of the earnest money on 23.12.2009. The only dispute in the present case is regarding readiness and willingness. In order to prove his readiness and willingness, the plaintiff-respondent No.1 stepped into the

witness-box as PW-4 and proved his affidavit dated 30.12.2009 (Ex.P3) duly attested by the Sub-Registrar, Tapa, copy of the legal notice dated 16.01.2010 (Ex.P2/1) requesting defendant No.1-appellant to appear before the Sub-Registrar, Tapa on 01.02.2010 and yet another affidavit dated 01.02.2010 (Ex.P1/A). On the other hand, the defendant No.1-appellant stepped into the witness-box as DW-2 and produced the reply to the legal notice dated 23.01.2010, a copy of the application dated 25.02.2010 (Ex.D2), copy of the statement of plaintiff-respondent No.1 recorded before the Police (Ex.D3) and copy of the report of DSP, Tapa (Ex.D4).

On the pleadings and the evidence led by the parties, both the Courts below have returned concurrent findings of fact that the plaintiff-respondent No.1 was able to show his readiness and willingness to perform his part of the contract. The suit for specific performance and permanent injunction filed by the plaintiff-respondent No.1 stands decreed by both the Courts below. Aggrieved by the said judgments and decrees, the present regular second appeal has been preferred by the defendant No.1-appellant.

Learned counsel for the defendant No.1-appellant has vehemently contended that a report was given by the DSP, Tapa as Ex.D4 wherein it was stated that plaintiff-respondent No.1 did not have the capacity to pay the balance amount on the stipulated date and, as such, the Courts have erred in decreeing the suit of the plaintiff-respondent No.1.

Heard.

In the present case the factum of the agreement to sell and the receipt of earnest money is not in dispute. The only dispute is qua the readiness and willingness of the plaintiff-respondent No.1 to perform his part of the contract. An application was filed by the plaintiff-respondent

No.1 to the SSP, Barnala against Prem Kumar, stamp-vendor, Chamkaur Singh (defendant No.1-appellant) and Harpal Singh for cheating him to the tune of Rs.40,000/- for getting his presence marked before the Sub-Registrar, Tapa. The DSP, Tapa gave a report (Ex.D4) wherein he has stated that the plaintiff-respondent No.1 did not have the financial capacity on the stipulated date. The said document cannot be made the basis for non-suiting the plaintiff-respondent No.1 inasmuch as the DSP, Tapa was no one to give a finding qua the financial capacity of the plaintiff-respondent No.1 especially when the same was not an issue before him. The plaintiff-respondent No.1 has paid a total amount of Rs.13,00,000/- and remained present on the target date for execution of the sale deed. His presence before the Sub-Registrar, Tapa stands duly proved. On the other hand, the defendant No.1-appellant has miserably failed to prove that he was ready to perform his part of the contract.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

21.07.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO