

**RSA-4320-2012 (O&M)
and connected case**

1

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

1.RSA-4320-2012 (O&M)

Balwan Singh

....Appellant

Versus

Angoori and others

..Respondents

1.RSA-4497-2012 (O&M)

Angoori and others

....Appellants

Versus

Balwan Singh

..Respondent

Date of decision: 24.05.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.M.K.Garg, Advocate for the appellant
in RSA-4320-2012 and
for the respondent in RSA-4497-2012

Mr. A.K.Kansal, Advocate for the respondents
in RSA-4320-2012 and
for the appellants in RSA-4497-2012

ANIL KSHETARPAL, J (Oral)

By this order, two Regular Second Appeals ie. RSA-4320-
2012 and RSA-4497-2012 shall stand disposed of.

The plaintiff as well as the defendants have filed cross
appeals. The plaintiff claims that he is entitled to specific performance of
the agreement to sell dated 15th May, 1996. On the other hand, the
defendants are aggrieved of the order passed by the First Appellate Court

ordering refund of double of the earnest money (i.e Rs. 60,000/- alongwith interest).

Some particular facts are required to be noticed. The plaintiff filed the suit for specific performance of the agreement to sell on 14th December, 2004. He claims that the defendants entered into an agreement to sell on 15th May, 1996 with the respect to 1 kanal 8 marlas of land for a total sale consideration of Rs.30,000/-. It is also claimed that the entire sale consideration was paid and the sale deed could have been executed at any point of time. The plaintiff after serving notice on 13th October, 2004, to which the defendants replied, claiming that no agreement to sell was executed, filed the suit. The defendant contested the suit and claimed that neither the agreement to sell dated 20th March, 1996 nor 15th May, 1996 was executed and the value of the property is not less than Rs.1,00,000/-. The trial court, on appreciation of evidence, dismissed the suit. It was held that the marginal witnesses of the agreement to sell have not been produced and the testimony of PW 1 Parmod, the scribe, harmed the case of the plaintiff. It was noticed that as per the case of the plaintiff the defendant after purchasing the stamp paper on 15th May, 1996 entered into an agreement to sell whereas entry no. 388 dated 14th May, 1996 proved that the stamp papers were purchased on a previous day. The court also found that there is no evidence of delivery of possession as the revenue record continues to show that the defendant is in possession of the said property. The plaintiff filed an appeal, which has been partially accepted and the court has held that although execution of the agreement to sell is proved,

however, the plaintiff was completely silent on the matter for the period of 8 years, before filing the suit. Thus, the First Appellate Court in its discretion ordered refund of Rs. 60,000/- alongwith the interest. These appeals have come up for hearing after a long period of 10 years.

Heard the learned counsel representing the parties at length and with their able assistance perused the paper book. On the one hand learned counsel representing the plaintiff contends that he is entitled to decree for specific performance, once execution of the agreement to sell on receipt of the entire sale consideration is proved. He submits that the suit filed by the plaintiff was within limitation as there was no agreed date for its performance.

Per contra, the learned counsel representing the legal representatives of defendant has stated that the plaintiff was never ready and willing to perform his part of the contract because he is a government employee. He submits that in cross examination the plaintiff has admitted that permission sought from the government for purchase of the property was declined. He further submits that there was no occasion for the First Appellate Court to pass a decree of refund of Rs. 60,000/- once the plaintiff was not ready and willing to perform his part of the contract.

The question which arises for consideration is as to whether in the facts and circumstances of the present case this Court should interfere in the discretion exercised by the First Appellate Court, that too after a period of 26 years from the date of agreement to sell. Learned counsel representing the plaintiff does not dispute that the plaintiff failed

to get the necessary permission from the office. In these circumstances, the delay for filing the suit was on the part of the plaintiff. This fact is corroborated by the silence of the plaintiff for a long period of 8 years. He took no major steps for the performance of the agreement during all this time. Moreover, there is a dispute with regard to the identity of the property. At the same time the plaintiff cannot be stated to be at fault because he has already paid the entire sale consideration to the defendant. Keeping in view the aforementioned facts, this Court is of the view that the discretion exercised by the First Appellate Court cannot be held to be arbitrarily exercised. The High Court can interfere with the discretion only if it is proved that it was not exercised in accordance with the well settled principles of law.

Accordingly both the appeals are ordered to be dismissed.

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

24.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**