

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2262 of 2013(O&M)

Date of decision:14.03.2022

Rajpal Singh

...Appellant

Versus

Rajbir Singh Chauhan

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate, for the appellant.
Mr. S.S.Majithia, Advocate, for the respondent.

ANIL KSHETARPAL, J (Oral)

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

The appellant herein is a defendant in a suit for possession by way of the specific performance of the agreement to sell. He calls into question the correctness of concurrent findings of fact arrived at by the courts below while decreeing the suit.

Some facts are required to be noticed.

The plaintiff filed the suit on 04.07.2005, with a prayer to grant a decree of possession by way of specific performance of the agreement to sell, dated 31.12.2004, with respect to 7 kanals and 16 marlas of land @ 50,000/- per kanal. At the time of execution of the agreement to sell, Rs.50,000/- was paid as earnest money out of the total sale consideration of Rs.3,90,000/-. Out of Rs.50,000/- as earnest money paid to the defendant, Rs.5,000/- was paid in cash, whereas Rs.45 000/- was paid through cheque which was proved to have been credited in the bank account of the defendant.

It was claimed by the plaintiff that on the agreed dated i.e. 15.06.2005, the defendant did not come forward to honour his part of the contract, whereas the plaintiff remained present in the office of sub-Registrar and got his affidavit attested in order to prove his presence. After serving notice dated 21.06.2005, the plaintiff, as already noted, filed the suit on 04.07.2005.

The defendant contested the suit claiming that he did not execute the agreement to sell and the agreement relied upon by the plaintiff is forged and fabricated. The defendant asserted that he borrowed a sum of Rs.40,000/- from the plaintiff in the year 2003, for installation of a tubewell. At that time, the signatures of the defendant were obtained by the plaintiff on blank papers as a security, on which the alleged agreement to sell has been drafted.

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 paper book as well as the record of the courts below which was requisitioned.

Sh. Akshay Jindal, learned counsel representing the appellant contends that the suit is liable to be dismissed as the plaintiff failed to prove his readiness to honour the agreement. While elaborating, he submits that the plaintiff has failed to prove that he was possessed of the means to pay the balance sale consideration of Rs.3,40,000/- apart from the stamp duty and registration charges. He draws the attention of the Court to the cross-examination of the plaintiff-Rajbir Singh Chauhan wherein he states that he is the owner of two acres of land and has no other work. He submits that such statement falls short of proving readiness. He further contends that the

first appellate Court has erred in overlooking the plea of the defendant with respect to undue hardship. While explaining, he submits that this is the only piece of land left with the defendant, which is the only source of the entire family.

Per contra, the learned counsel representing the plaintiff contends that the plaintiff was never cross-examined with regard to the availability of the balance sale consideration specifically. He submits that the inference sought to be drawn by learned counsel representing the appellant is not made out. He further contends that the defendant entered into an agreement to sell with open eyes and therefore, now at the stage of Regular Second Appeal, his prayer for denial of relief of specific performance on the ground of hardship should not be accepted.

Having heard the learned counsel representing the parties, this Court is of the considered view that there is no substance in the present appeal for the following reasons:-

It is evident that the plaintiff filed the suit within a period of 20 days from the agreed date as per the agreement to sell. The sale deed was to be executed on 15.06.2005, whereas the suit was filed on 04.07.2005. The plaintiff, while filing the suit, specifically asserted that he was always ready and willing to perform his part of the contract. On the agreed date, the plaintiff visited the office of sub-registrar and got attested an affidavit explaining that he is prepared to perform his part of the contract. While appearing in evidence, the plaintiff, once again, asserted that he is and he has always been ready and willing to get the sale deed executed as per the agreement to sell and he is possessed of the means to pay the balance sale consideration. The plaintiff also asserted that he visited the office of sub-

registrar on 15.06.2005, along with balance sale consideration and the amount required for payment of stamp duty and registration charges.

The learned counsel representing the appellant failed to draw the attention of the Court to any specific question in the cross-examination of the plaintiff regarding his capacity to pay the balance sale consideration. In such circumstances, merely because the plaintiff has stated that his family is dependent upon the income from two acres of land, is not sufficient to record a finding that the plaintiff was not possessed of sufficient means to honour his agreement. It may be noted here that the plaintiff has stated that he gets regular pension from the Defence Forces @ Rs.3,000/- to Rs.3,500/- per month, at the relevant time. Apart therefrom, he was owner of two acres of land.

Hence, this Court expresses its inability to accept the first argument of the learned counsel representing the appellant.

As regard the next argument, it may be noted that no doubt, the defendant has asserted that this is the only piece of land available with him and therefore, the relief of specific performance should not be granted. However, while hearing a Regular Second Appeal, the jurisdiction of the court is limited. In the present case, the defendant initially took a stand that there was no agreement to sell. No doubt, in the alternative, he put forth a plea of hardship. However, in the facts and circumstances of the present case, this court does not find it appropriate to deny the relief of specific performance of the agreement to sell.

Since the balance sale consideration of Rs.3,40,000/- has not been paid to the defendant, which was due to be payable on 15.06.2005, therefore, the judgment and decree passed by the courts below is modified

while directing the plaintiff to pay the balance sale consideration of Rs.3,40,000/- along with interest @ 10% per annum from the date it was payable i.e. 15.06.2005, till the amount is deposited in the Court.

With this aforesaid modification, the appeal is disposed of.

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

March 14, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No