

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

RSA-380-2015(O&M)
Date of Order: 08.03.2022

RAMESH KUMAR

..Appellant

Versus

AMIR SINGH AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

Mr. Aseem Kataria, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

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

The plaintiff assails the correctness of judgment and decree passed by the First Appellate Court while granting him alternative relief of refund of earnest money along with interest while declining the relief of specific performance of the agreement to sell.

Some facts are required to be noticed.

The plaintiff filed a suit claiming that the defendant No.1 has entered into an agreement to sell dated 07.05.2002, with respect to the land measuring 20 Kanals and 18 Marlas on receipt of earnest money of Rs.20,000/-. It was alleged that the land was agreed to be sold at the rate of Rs.1,42,000/- per acre and the sale deed was to be executed on 06.05.2003.

The plaintiff also claims that by mutual agreement, the date for execution of the sale deed was extended to 19.11.2003. He further claims that on 19.11.2003, he waited for the defendant the whole day but defendant did not come forward to execute the sale deed. Thereafter, the plaintiff got his

presence marked by getting an affidavit attested from the Executing Magistrate.

Per contra, the defendant contested the suit while admitting execution of the agreement to sell on receipt of Rs.20,000/-. It was asserted that on 19.11.2003 the defendant was ready to perform his part of contract but the plaintiff was not prepared. The defendant No.1 also issued a notice dated 25.11.2003 calling upon the plaintiff to get the sale deed executed but the plaintiff did not honor his part of the agreement.

The learned trial Court dismissed the suit, whereas, the First Appellate Court has ordered refund of the amount of earnest money along with interest at the rate 9% per annum from the date when the amount was received by defendant No.1 till judgment of the First Appellate Court along with future interest at the rate of 6% per annum till realization.

This Bench has heard the learned counsel representing the parties at length and with their able assistance, perused the judgment passed by the Courts below and the record of the trial Court which was requisitioned.

The learned counsel representing the appellant contends that as per the agreement to sell, the sale deed could be executed only if defendant No.1 repays the amount and brings a copy of the jamabandi to the plaintiff. He further submits that the plaintiff was always ready and willing to perform his part of the contract.

Per contra, the learned counsel representing the defendant No.1 has contended that the plaintiff has failed to prove that he was always ready and willing to perform his part of the contract. While elaborating, he submits that the plaintiff has failed to prove that he had made arrangements to pay the

balance consideration of Rs.3,50,975/-.

No doubt, in the agreement to sell, it is provided that the defendant No.1 will repay the amount of loan and thereafter, bring a copy of jamabandi to the plaintiff. However, it is important to note that the plaintiff is required to prove his readiness and willingness on the agreed date that is 19.11.2003. It is not the case of the plaintiff that in absence of repayment of the loan, he was not prepared to get the sale deed registered while retaining the loan amount. It is his own case that he went to the Office of the Sub-Registrar on 19.11.2003, along with the balance sale consideration. However, the plaintiff has not led any reliable evidence except his own bald statement to the effect that he had made arrangements for the payment of balance sale consideration. Further, the defendant admittedly sent a notice to the plaintiff on 25.11.2003, still, the plaintiff did not come forward to execute the sale deed. The plaintiff filed the suit after a period of nearly one year. As per Section 16 of the Specific Relief Act, 1963, the plaintiff is required to prove that he was always ready and willing to perform his part of the contract. The learned First Appellate Court has recorded a finding of fact on the appreciation of evidence. The learned counsel representing the appellant failed to draw the attention of the Court to any substantive error in reading the evidence. There is no allegation of non-reading of any material evidence.

In view thereof, no ground to interfere is made out.

Dismissed.

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

March 08th, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No