

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

RSA-3071-2014(O&M)

Date of decision:-22.11.2022

Santosh Sharma

...Appellant

Versus

Shiv Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ranjit Sharma, Advocate
for the appellant.

Mr.Upender Prasher, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Shiv Kumar had brought a suit against defendant Smt.Santosh Sharma seeking possession by specific performance of agreement to sell dated 16.3.2006 said to have been entered into between the parties with regard to property bearing Khasra No.1349/154 min, having total area 275 square yards situated in the area of Wadali Guru Urban Abadi Jwala Nagar, Naraingarh, Chheharta, Tehsil & District Amritsar or in the alternative seeking recovery of Rs.5 lakhs i.e. Rs.3

lakhs paid as earnest money and Rs.2 lakhs as damages thereon along with further interest.

2. According to the plaintiff, the defendant had agreed to sell the plot detailed in the head-note of the plaint with the plaintiff vide agreement to sell dated 16.3.2006 for a sum of Rs.5,50,000/-, receiving Rs.2 lakhs as earnest money and date of execution of sale deed was fixed on or before 14.3.2007; a written agreement was executed; thereafter the defendant received a further sum of Rs.1,00,000/- from the plaintiff on 7.8.2006 and an endorsement in that regard was made on the back of the first leaf of the agreement to sell dated 16.3.2006; on the stipulated date i.e. 14.3.2007, the plaintiff appeared before Sub Registrar, Amritsar along with balance sale consideration amount and remained present there from 9:00 a.m. to 5:00 p.m. but the defendant did not turn up to execute the sale deed and get it registered in favour of the plaintiff; the plaintiff moved an application for marking his presence before the office of Sub-Registrar, Amritsar and also sworn an affidavit in that regard; thereafter the plaintiff got served a legal notice dated 3.4.2007 upon the defendant calling upon her to come and execute the sale deed in favour of the plaintiff but to no effect, as such he filed the suit.

3. On notice the defendant had appeared and filed written statement contesting the suit raising preliminary objections challenging the locus standi of the plaintiff to file the suit contending

that the plaintiff was estopped by his own act and conduct to file the suit; the plaintiff had not come to the Court with clean hands and suppressed the true and material facts from the Court; the suit as framed was not maintainable; the suit so filed has not been properly and correctly valued for the purpose of Court fee and jurisdiction; the civil Court has no jurisdiction to entertain the suit. On merits, the defendant admitted that she had entered into an agreement to sell with the plaintiff stating that on the date fixed for execution of the sale deed since the plaintiff was not having sufficient money with him to pay the balance sale consideration amount and to bear expenses for execution of sale deed, he did not get the sale deed executed and registered. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

- 1. Whether the plaintiff is entitled to possession by way of specific performance of the agreement to sell dated 16.3.2006 executed by the defendant in favour of the plaintiff, or in the alternative whether the plaintiff is entitled to recover a sum of Rs.5,00,000/- as prayed for? OPP.*

2. *Whether suit is not legally maintainable in the present form?*

OPD.

3. *Whether the plaintiff has not come to the Court with clean hands, if so, its effect? OPD.*

4. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*

5. *Whether the suit is liable to be stayed under Section 10 of CPC? OPD.*

6. *Whether the plaintiff has no cause of action to file the present suit? OPD.*

7. *Whether the plaintiff has no locus standi to file the present suit? OPD.*

8. *Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD.*

9. *Relief.*

6. The parties led evidence in support of their respective claims.

In order to prove his case, the plaintiff got his own statement recorded as PW1 and thereafter closed his evidence.

In rebuttal, the defendant appeared as DW1 besides examining Neelam Sharma as DW2 and thereafter closed the evidence.

7. After hearing the learned counsel for the parties, the trial

Court decided issue No.1 in favour of the plaintiff and against the defendant, issues No.2 to 8 were decided against the defendant having not pressed. Resultantly, the suit of the plaintiff for specific performance of agreement to sell dated 16.3.2006 was decreed by the trial Court vide judgment and decree dated 22.2.2013, subject to deposit of the entire balance sale consideration in the Court by 26.3.2013 or by making the payment directly to the defendant before the said date to get the sale deed executed in his favour. In the event of non-compliance, the suit would be deemed to have been dismissed.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Amritsar, which was assigned to learned Additional District Judge, Amritsar, who vide judgment and decree dated 17.5.2014 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

10. I have heard learned counsel for the parties besides going through the record and I do not find any merit in this appeal.

11. Here the defendant does not dispute having entered into

an agreement to sell with the plaintiff on 16.3.2006 with regard to the property in question for a sum of Rs.5,50,000/- having received earnest money as claimed by the plaintiff and date for execution and registration of sale deed having been fixed as 14.3.2007, though the version of the defendant is that since plaintiff was not having money with him to pay the balance sale consideration amount and bear expenses for execution and registration of the sale deed, the transaction could not be completed. The only question, which was left for determination was whether the plaintiff has been ready and willing to perform his part of contract. Both the Court below on proper analysis of evidence in light of the settled legal position have answered this question in affirmative finding the plaintiff to be entitled to the relief of possession by way of specific performance. With such concurrent findings being there, which are obviously without any element of arbitrariness, no case is made out to disagree with the trial Court and First Appellate Court in that regard and to reverse the judgments and decrees passed by them.

12. Both the judgments and decrees are quite detailed and well reasoned passed as a result of proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No substantial question of law or fact arises in the appeal.

13. Findings no merit in the appeal, the same stands

dismissed accordingly.

22.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No