

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

RSA No.4765 of 2019 (O&M)

Date of decision : 15th September, 2022

Tejbir Singh

... Appellant

Versus

Prabhjot Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Karan Singh, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

Suit for possession filed by the appellant Tejbir Singh was dismissed by the trial Court vide its judgment and decree dated 21.08.2015 and the appeal preferred by him against the aforesaid judgment and decree was also dismissed by the lower appellate Court vide judgment dated 02.08.2019. The plaintiff is impugning the concurrent findings of both the Courts below by way of instant Regular Second Appeal. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus:-

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 07.02.2008 with respect to the land measuring 10 Marlas i.e. 300 square yards (hereinafter referred to as, 'the suit land'), detailed in the head note of the plaint, for a total

sale consideration of ₹6.00 lacs. The defendant received a sum of ₹2,10,000/- as earnest money from the plaintiff at the time of execution of the agreement to sell in the presence of the witnesses. The date of execution and registration of the sale deed was set for 16.05.2008, on payment of balance sale consideration and other expenses. The plaintiff claimed that on 16.05.2008, he remained present in the office of Registrar along with balance sale consideration and also got his presence marked by way of an affidavit duly attested by a Notary. However, despite waiting for the whole day, the defendant did not show up. Thereafter, the plaintiff contacted the defendant a number of times and also served upon him a legal notice dated 23.10.2008 through his counsel however, even the said notice failed to yield any results. The plaintiff claimed that since he had always been ready and willing to perform his part of the contract, the suit instituted by him deserved to be decreed.

In his written statement, the defendant denied the averments made in the plaint. On the contrary he submitted that on 16.05.2008 he had gone to the Tehsil premises to perform his part of the contract and had remained present in the office of Tehsildar throughout the day, however, it was the plaintiff who did not turn up to perform his part of the contract. It was also claimed by the defendant that he had got his presence marked by way of an affidavit which was duly attested by the Executive Magistrate on 16.05.2008. The

defendant alleged that the plaintiff had failed to comply with the terms and conditions of the agreement to sell due to paucity of finances and hence, suit by plaintiff was liable to be dismissed and the earnest money given by the plaintiff to the defendant was liable to be forfeited.

On the basis of material on record and evidence led, both the courts below held that there was lack of readiness and willingness on the part of the plaintiff to perform his part of the contract on account of paucity of funds. The courts below noted that if the plaintiff had actually been present at the Tehsil office, then in that case he would have got his affidavit attested by the Tehsildar or Naib Tehsildar; however, that was not the case. Whereas, on the other hand the defendant had not only got his presence marked but there was also an affidavit duly attested by the Executive Magistrate in support thereof. The Court below ordered forfeiture of the earnest money given by the plaintiff to the defendant as the former had failed to honour his part of the agreement.

Learned counsel for the appellant/plaintiff has vehemently argued that the courts below failed to appreciate that plaintiff had deposited ₹2,10,000/- in the presence of the witnesses and the presence of the plaintiff had been marked and attested by the Notary in the office of Registrar on date of execution i.e. 16.05.2008 and thus, the courts erred in holding that there was lack of readiness and willingness on his part. It was also urged that even though a legal notice dated 23.10.2008

was sent to the defendant however still he failed to show up and perform his part of the contract. He further urged that at best the forfeiture of earnest money should have been ordered to the extent of 10% of the total sale consideration i.e. only ₹ 60,000/- should be considered earnest money as per the prevalent market rates and the entire ₹ 2,10,000/- paid could not have been ordered to be forfeited. He prayed that remaining amount after deduction of ₹60,000/- be ordered to be returned to him in the alternative.

I have heard learned counsel for the appellant and perused the relevant material on record.

In the totality of circumstances, this Court is not persuaded that the findings of fact recorded by the courts below are based on misreading of evidence or they are based on no evidence so as to justify interference of this Court in second appeal. It was urged by the learned counsel for the appellant that the plaintiff was unable to get his presence marked before the Tehsildar or Naib Tehsildar because aforementioned were not in office on the said date and hence he got his presence marked and attested by a Notary. Though the affidavit attested by Notary had been heavily relied upon by the appellant, however, same holds no weight as the said affidavit has not even been attested at the place where the agreement to sell was supposed to be executed, instead it has been attested at Jagadhri whereas the agreement was to be executed at Chhachhrauli.

Further, the stand of the appellant that no Tehsildar or Naib Tehsildar was present in Tehsil Office on 16.05.2008, stands belied from the fact that not only the above mentioned officials were present on the said date in their office, but in fact seven sale deeds were executed and registered on the same day in the Tehsil office at Chhachhrauli.

On being pointedly asked, learned counsel has been unable to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. This Court does not find any error in the concurrent findings recorded by the courts below as the same do not reflect any illegality or perversity. In the circumstances, the appeal being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 15, 2022

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No