

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2540 of 2022 (O&M)

Reserved on : 24.11.2022

Date of Decision: 30.11.2022

Hari Krishan Bharadwaj

....Appellant

VERSUS

Deepinder Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K. S. Chaudhary, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the impugned judgments and decrees dated 22.11.2018 and 23.09.2022 passed by the Trial Court and the lower Appellate Court respectively whereby his suit for specific performance has been dismissed.

The brief facts relevant to the present *lis* are that the parties executed an agreement to sell dated 29.03.2016 whereby the defendant-respondent agreed to sell to the plaintiff-appellant Plot No.89 measuring 232 square yards situated at Block-C in the Panchsheel Co-op. Housing Building Society, Zirakpur, Rajpura Road, SAS Nagar, Mohali for a total consideration of Rs.12,25,000/-. The sale deed was to be executed on or before 30.06.2016 and out of the total amount the defendant-respondent received Rs.2,50,000/- from the plaintiff-appellant as earnest money on 30.03.2016. On 26.06.2016 the plaintiff-appellant through his representative Sh. Pardeep Seth contacted the defendant-respondent and categorically stated that the plaintiff-appellant was ready with the balance consideration and demanded photocopies of requisite documents pertaining to the plot but defendant-respondent refused to hand over the same and demanded the

balance consideration amount. On 30.06.2016, a meeting was held between the plaintiff-appellant, through his representative, with the defendant-respondent to hand over the draft agreement and other relevant documents to be executed. But the defendant-respondent reiterated his demand of making payment of the entire balance consideration and refused to handover the photocopies of chain of title documents to the plaintiff-appellant. As such, the plaintiff-appellant instituted the suit for specific performance of execution of the agreement as well as for the recovery of Rs.2,50,000/- along with a consequential relief for permanent injunction.

Upon notice the defendant-respondent filed a written statement contending that the plaintiff-appellant had withheld two letters which the defendant-respondent had written to the plaintiff-appellant about his not having fulfilled the terms of the agreement dated 29.03.2016 and that in Clause No.1 of the said agreement it had been specifically mentioned that if the second party fails to pay the balance amount of Rs.9,75,000/- on or before 30.06.2016 then the earnest money of Rs.2,50,000/- would stand forfeited. It was averred that the plaintiff-appellant was never financially in a position to perform his part of the obligation and in this regard the defendant-respondent had written letters dated 31.05.2016 and 08.07.2016 to him. It was also pleaded that as per Clause No.5 of the agreement to sell, the plaintiff-appellant was duly supplied the copy of the allotment-cum-possession letter in the last week of May 2016 and that the earnest money stood forfeited.

On the basis of the pleadings of the parties the followings issues were framed :

1. Whether the defendant entered into an agreement to sell the suit land with plaintiff ? OPP
2. Whether the plaintiff is entitled to the specific performance of agreement to sell ? OPP
3. Whether the plaintiff is ready and willing to perform his part of contract ? OPP
4. Whether the plaintiff is entitled to relief of permanent injunction as prayed for ? OPP
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Relief.

Vide judgement and decree dated 22.11.2018 the Trial Court, based on the pleadings of the parties and the evidence on the record, dismissed the suit of the plaintiff-appellant holding that the the plaintiff-appellant was not ready with the balance sale consideration and the plea regarding the non showing of the original documents by the defendant-respondent was an afterthought to avoid his liability *qua* the agreement to sell and was a cover up. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant. However, vide judgment and decree dated 23.09.2022 the said appeal was dismissed. Hence, the present regular second appeal.

It is argued by learned counsel for the plaintiff-appellant that the Courts below have erred in dismissing the suit of the plaintiff-appellant. According to counsel, it was amply proved that the defendant-respondent had not performed his part of the contract. The plaintiff-appellant had the

financial capability and was ready to perform his part of the contract and as such his suit for specific performance deserved to be decreed.

I have heard learned counsel for the plaintiff-appellant.

The facts of the case show that an agreement to sell dated 29.03.2016 was executed regarding the plot. The Courts below have found that there was no readiness and willingness on the part of plaintiff-appellant to get the sale deed executed in his favour while the defendant-respondent was ready and willing to perform his part of the contract. There is nothing on the record to show that the plaintiff-appellant had sufficient means to perform his part of the agreement to sell especially when the defendant-respondent has disputed the financial capability of the plaintiff-appellant. The defendant-respondent had issued a notice dated 31.05.2016 expressing his readiness and willingness to perform his part of the obligation. The plaintiff-appellant received this notice but chose not even to reply to the same. The plaintiff-appellant did not even meet the defendant-respondent for execution of the sale deed. Even the broker/middleman, PW2 Pardeep Seth, who had got the deal finalized between the parties, was trying to get the sale deed executed in favour of some other third party. The stand taken by the plaintiff-appellant that he was not shown or given the documents regarding the plot has not found favour with the Courts below and even before this Court learned counsel for the plaintiff-appellant has been unable to show anything on the record to convince this Court.

In view of the discussion above, I do not find any illegality or infirmity in the judgements and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present

regular second appeal. The appeal is accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

30.11.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO