

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

RSA-6097-2017 (O&M)

Date of decision: 04.05.2022

Raj Kumar (deceased) through his L.Rs

....Appellants

Versus

Harpal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Arora, Advocate for the appellants
Mr. Onkar Singh, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

While assailing the judgment and decree passed by the First Appellate Court, the defendant has filed the present appeal. Some facts are required to be noticed. Harpal Singh and Harmesh Kumar filed a suit on 22.03.2010 for grant of decree for possession as owner by means of specific performance of the agreement to sell dated 20.03.2007, allegedly executed by defendant no.1, in their favour with respect to 17 kanals 5 marlas of land being 1/4th share out of 69 kanals and 1 marla land. The plaintiffs in the alternative prayed for recovery of the amount. They claim that defendant no.1 Raman Kumari @ Rama, daughter of Kishore Chand agreed to sell land measuring 17 kanals 5 marlas for Rs.7,25,000/- vide an agreement to sell dated 20.03.2007. Earnest money of Rs.2,15,000/- was stated to have been paid to Smt. Raman Kumari and the sale deed was agreed to be executed on or before 30.04.2007. The plaintiffs claim that on additional payment of Rs.3,00,000/- the date for execution of the sale deed was extended to

30.06.2007. Subsequently, the date of execution of the sale deed was extended to 31.08.2007.

As already noticed, the plaintiffs filed the suit on 22.03.2010 i.e after a period of 2 years and 7 months approximately. Defendant no.1 admitted the execution of the agreement to sell whereas defendant no.2 (Raj Kumar) brother of Smt. Raman Kumari claim that the suit property was initially owned by their father Kishore Chand, who bequeathed the property in favour defendant no.2 i.e Raj Kumar.

Learned trial court, on appreciation of evidence, found that defendant no.1 (Raman Kumari) executed the agreement to sell and at the first instance received Rs.2,15,000/- as earnest money and subsequently, received Rs.3,00,000/-. However, the court found that the plaintiffs have failed to prove their readiness and willingness on the agreed date i.e 31.08.2007. It was found that there is an unexplained delay of 2 years and 7 months in filing the suit and therefore, the trial court in exercise of its discretion refused to grant decree for possession by way of specific performance of the agreement to sell.

The plaintiffs filed the first appeal, which was accepted. The First Appellate Court assumed that the plaintiffs were always ready and willing to perform their part of the contract because they paid 70% of the total sale consideration.

Heard learned counsel representing the parties at length and with their able assistance perused the judgments passed by the courts below alongwith the record, which was requisitioned. Learned counsel representing the appellants contends that on the agreed date i.e

31.08.2007, the plaintiffs did not visit the office of the Sub Registrar to prove their readiness and willingness to perform their part of the contract. He submits that the sale deed was to be registered in the office of the Sub Registrar exercising the powers of the Registrar. He further contends that the plaintiffs did not take any steps even after 31.08.2007 for a period of nearly 2 years and 7 months. They did not issue any notice. Hence, he submits that the First Appellate Court has erred in reversing the judgment and decree passed by the trial court.

Per contra, learned counsel representing the plaintiffs has stated that Smt. Raman Kumari had herself got the date of execution and registration of sale deed extended. He further submits that the plaintiff Harpal Singh, while appearing in evidence, has stated that he was always ready and willing to perform his part of the contract.

After having heard the learned counsel representing the parties at length, this Court is of the considered view that the First Appellate Court has committed an error in interfering with the judgment passed by the trial court on the following grounds:-

(a) As per the agreement to sell between the parties, date of which was subsequently extended, the sale deed was to be executed on or before 31.08.2007. There is no evidence to prove that the plaintiffs visited the office of the Sub Registrar alongwith the balance sale consideration. Admittedly, the sale deed was to be registered in the office of the Sub Registrar. Though in the cross examination Harpal Singh has stated that he visited the office of Sub Registrar and got his presence marked but no evidence in support thereof was produced.

(b) Furthermore, there is no positive act on the part of the plaintiffs after 31.08.2007. The agreed date for performance of the agreement to sell is important. The plaintiffs before succeeding in a suit for specific performance are required to prove their readiness and willingness on the agreed date, as per the agreement to sell. Furthermore, there is complete silence on the part of the plaintiffs for a period of 2 years and 7 months. They did not even send a notice to the defendants to come and execute the sale deed during this time. In these circumstances, the First Appellate Court wrongly assumed that the plaintiffs were ready and willing to perform their part of the contract merely because they had paid Rs.5,15,000/-. Still, the plaintiffs were required to pay Rs.2,10,000/-.

Before a suit for specific performance of the agreement to sell can be decreed, the plaintiffs are required to prove that they were always ready and willing to perform their part of the contract. Section 16 of the Specific Relief Act, 1963 reads as under:-

“16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

From the evidence available on the file, it is evident that the plaintiffs miserably failed to prove that he was ready and willing to perform his part of the contract. Hence, the First Appellate Court committed an error in decreeing the suit.

Furthermore, the learned trial court in exercise of its discretion recorded cogent reasons to deny the relief of specific performance of the agreement to sell. In the absence of any perversity, the First Appellate Court should not interfere with the discretion exercised. When the trial court has exercised the discretion in accordance with law, the First Appellate court should hesitate in interfering and should be careful while setting aside the judgment passed by the trial court.

Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is set aside whereas the judgment and decree passed by the learned trial court is restored.

The Regular Second Appeal stands allowed.

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

04.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE