

RSA-4891-2016(O&M) &
RSA-6865-2016(O&M)

-1-

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

(1) **RSA-4891-2016(O&M)**

Dinesh Kumar

...Appellant

Versus

Ramesh Kumar

...Respondent

(2) **RSA-6865-2016(O&M)**

Dinesh Kumar

...Appellant

Versus

Ramesh Kumar

...Respondent

Reserved on:11.5.2023
Date of Pronouncement:-16.5.2023

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

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the appellant in both appeals.

Respondent Ramesh Kumar in person.

H.S. MADAAN, J.

CM-17861-C-2016 in
RSA-6865-2016

For the reasons mentioned in the application, the same is
allowed and delay of 3 days in filing of the appeal stands condoned.

RSA-4891-2016(O&M) &
RSA-6865-2016(O&M)

1. By this order, I shall dispose of **RSA-4891-2016(O&M)** and **RSA-6865-2016(O&M)** filed on behalf of appellant – Dinesh Kumar.
2. Briefly stated, facts of the case are that plaintiff Ramesh Kumar had brought a suit against Dinesh Kumar seeking possession of agricultural land bearing khewat no.238 khatoni no.290-294 kita 85 measuring 458 kanals 1 marla to the extent of 172/9161 share i.e. 8 kanals 12 marlas situated at village Pota, Sub Tehsil Kanina, District Mohindergarh, as per jamabandi for the year 2004-05 by specific performance of agreement to sell dated 17.6.2009.
3. As per the version of the plaintiff, the defendant had entered into an agreement to sell such land with him on 17.6.2009 @ Rs.7 lakhs per acre for total sale consideration of Rs.7,52,500/- receiving Rs.4 lakhs as earnest money; the balance amount was to be paid at the time of execution and registration of the sale deed up to 31.7.2009; the written agreement had been scribed by Sh.Prithvi Chand Sharma, Deed Writer, signed by the defendant in presence of witnesses, who had also put their signatures thereon; at the time of entering into agreement, possession of the suit land was handed over by the defendant to the plaintiff, however the defendant had taken loan on suit property from GGB Sehlang and to get the suit land free from encumbrance, he demanded money from the plaintiff, therefore, the plaintiff paid Rs.3 lakhs to the defendant vide cheque No.329651 in presence of witnesses Pahlad Singh, Leelu Ram and Ram Chander; on the last date fixed for execution and registration of the sale deed i.e. on 31.7.2009, the plaintiff along with balance sale consideration amount and expenses for execution and registration of the

sale deed remained present in the office of Sub-Registrar, Mohindergarh till 5:00 p.m. and waited for defendant but he did not come there; the plaintiff got his presence marked in the shape of a sworn affidavit before Sub Registrar, Mohindergarh; thereafter on 1.8.2009, the plaintiff sent a legal notice to the defendant through counsel Sh.DV Yadav calling upon him to get the sale deed executed and registered on 10.8.2009; again the defendant did not appear in the office of Sub Registrar, Kanina on that date, though the plaintiff remained present there; the defendant rather threatened to interfere in possession of the plaintiff over the suit land and to alienate the same, giving rise to a cause of action to the plaintiff to bring the suit in question.

4. On getting notice, the defendant appeared and filed a written statement admitting the agreement to sell dated 17.6.2009 having been entered into between the parties @ Rs.7 lakhs per acre, receiving Rs.4 lakhs as earnest money but he denied having handed over possession of the suit land to the plaintiff. The defendant admitted that there was loan on suit land, which he had discharged by making payment of Rs.1,10,000/- on 31.7.2009 to GGB Branch, Sehlang but denied that he had demanded money from the plaintiff or plaintiff had paid him Rs.3 lakhs in the form of bank cheque in presence of witnesses. According to the defendant, the plaintiff had not made payment of remaining sale consideration of Rs.3,52,500/- on 31.7.2009, the date fixed for execution and registration of sale deed, therefore he failed to perform his part of contract. According to the defendant, he had not received any notice sent by the plaintiff to him through his counsel. Refuting the remaining

assertions, the defendant prayed for dismissal of the suit.

5. On the pleadings of the parties, following issues, including an additional issue were framed:

1. Whether plaintiff made payment of Rs.3,00,000/- through cheque no.329651 on 15.7.2009 to defendant as, of consideration against agreement dated 17.6.2009 for sale of 8 kanal 12 marla land by defendant in favour of plaintiff @ Rs.7,00,000/- per acre? OPP.
2. If issue no.1 is proved in affirmative, whether plaintiff has been willing and ready and he is still willing and ready to perform his part of contract dated 17.6.2009? OPP.
3. If above issues are proved in affirmative whether plaintiff is entitled for decree of specific performance of contract dated 17.6.2009 and delivery of possession of the property which is subject matter of the suit of plaintiff measuring 08 kanal 12 marla? OPP.
4. Whether plaintiff has come to the court with unclean hands, therefore, his suit is not maintainable? OPD.
5. Whether plaintiff has no locus standi for filing of the present suit? OPD.
6. Relief.

6. Both the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge(Sr.Divn.), Mohindergarh vide judgment and decree dated 18.3.2015 declined the relief of specific performance to the plaintiff but the plaintiff was found entitled to money decree for Rs.7

lakhs with cost along with interest @6% per annum from the date of institution of suit till realization of decretal amount.

8. Feeling aggrieved by the said judgment and decree, the defendant had preferred an appeal before learned District Judge, Narnaul. The plaintiff was also aggrieved by the judgment and decree declining him the relief of specific performance and he had also preferred an appeal. Both the appeals were disposed of by learned District Judge, Narnaul vide a single judgment and decree dated 10.5.2016 in terms of which appeal filed by defendant was dismissed, whereas appeal filed by the plaintiff was accepted. The impugned judgment and decree passed by the trial Court were set aside and a decree for possession by way of specific performance of agreement to sell was passed in favour of the plaintiff against the defendant on payment of balance sale consideration of Rs.52,500/ within a period of two months from the date of judgment. It was further observed that in case the defendant does not execute the sale deed within stipulated period of two months from the date of judgment after receiving a sum of Rs.52,500/- or refuses to receive the balance amount of Rs.52,500/- and to execute the sale deed, then the plaintiff shall deposit the amount of balance consideration in the Court thereafter and would be entitled to get the sale deed executed through agency of the trial Court. It was clarified that if the plaintiff failed to deposit the amount within two months as directed, then suit of the plaintiff would stand dismissed with costs throughout.

9. Being dissatisfied with the judgments and decrees passed the Courts below, the appellant/defendant has approached this Court by way

of filing separate appeals, notice of which were issued and respondent has put in appearance.

10. I have heard learned counsel for the appellant and respondent besides going through the records and I find that the appeals are without any merit.

11. In this case the defendant had admitted the agreement to sell executed on 17.6.2009 between the parties @ Rs.7 lakhs per acre and receiving Rs.4 lakh as earnest money. Though he had denied that he had delivered possession of the suit land to the plaintiff or had received Rs.3 lakhs from him vide a banker cheque in presence of witnesses on 15.7.2009.

12. The trial Court on analysis of the evidence had come to the conclusion that the defendant had received total amount of Rs.7 lakhs i.e. Rs.4 lakhs at the time of agreement to sell dated 17.6.2009 and Rs.3 lakhs subsequently through self cheque dated 15.7.2009 out of bank account of the plaintiff. Issue No.1 was accordingly decided in favour of the plaintiff and against the defendant. With regard to issue No.2, the finding given shows inability of the Presiding Officer to understand the factual and legal position properly. From the evidence available on record, the plaintiff had clearly proved that he has been ready and willing to perform his part of contract and is even now ready and willing to do so and the contract had failed on account of defendant backing out. But the trial Court decided the issue against the plaintiff in a mechanical way showing total non-application of mind. Similarly, the specific performance of agreement was wrongly denied to the plaintiff without giving any cogent and convincing

reason just saying that on account of findings on issues No.1 and 2 the plaintiff is not entitled to discretionary relief of specific performance of agreement to sell.

13. However, learned District Judge, Narnaul corrected the wrong done by the trial Court by reversing the findings of the trial Court on issues No.1 and 2 and granting specific performance of agreement to sell to the plaintiff.

14. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

15. No substantial question of law or fact arises in this appeal.

16. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the District Judge, Narnaul.

17. The appeals stand dismissed accordingly.

Since the main appeals stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

16.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No