

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-1751-2018

Date of Decision: 21.11.2023

Dharambir

....Appellant

VERSUS

Ranbir Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. J.P.Sharma, Advocate,
for the appellant.

KARAMJIT SINGH, J.

The present appeal has been filed by the appellant-plaintiff against the judgment and decree dated 15.2.2016 passed by the Court of Civil Judge, Junior Division, Mahendergarh whereby the suit filed by the appellant was partly decreed for recovery of ₹ 61,000/- with costs along with interest by way of alternative relief and judgment & decree dated 9.9.2017 whereby the appeal filed by the appellant against the aforesaid judgment and decree of the trial Court was dismissed.

2. Brief facts of the case of the appellant are that the respondent-defendant executed an agreement to sell the suit property with the appellant-plaintiff for total sale consideration of ₹ 61,000/- on 19.6.2003 and at the time of execution of said agreement, the entire sale consideration was paid to the vendor by the appellant-plaintiff and vendor handed over the possession of suit property to the appellant and it was agreed between the

parties that the sale deed is to be registered as per wishes of the appellant-plaintiff at any time; that on 19.6.2012, the appellant-plaintiff served legal notice directing the respondent-defendant to execute the sale deed in his favour on 3.7.2012, on the basis of agreement to sell dated 19.6.2003. The appellant-plaintiff appeared in the office of Sub-Registrar, Mahendergarh on 3.7.2012 for the purpose of execution and registration of the sale deed in his favour. However, the respondent-defendant failed to turn up and then the appellant-plaintiff got marked his presence through an affidavit which was attested by Sub-Registrar, Mahendergarh. On failure of the respondent-defendant to execute and register the sale deed, the appellant-plaintiff filed suit for possession by way of specific performance of an agreement to sell dated 19.6.2003 and in the alternative, suit for recovery of ₹ 61,000/- along with interest.

3. On notice of the suit, the respondent-defendant appeared and contested the suit by filing written statement wherein execution of the agreement to sell dated 19.6.2003 was denied and it was further pleaded that the same is a result of fraud and mis-representation and is not binding on the respondent-defendant. It was further pleaded that the appellant-plaintiff is involved in the business of money lending and the signatures of the respondent-defendant were obtained on agreement to sell as a witness. It was further pleaded that agreement to sell dated 19.6.2003 is liable to be cancelled as the same is only a paper transaction and the same is without consideration and that possession of the suit property was never delivered to the appellant-plaintiff by the respondent-defendant. It was further pleaded that there was certain dispute between the parties regarding construction raised over a plot and in this regard, writing dated 20.4.2012 was executed

between the parties whereby the appellant-plaintiff admitted receipt of ₹ 35,000/-.

4. On the pleadings of the parties, following issues were framed by the learned trial Court : -

1. Whether defendant executed agreement to sell dated 19.06.2003 with respect to the suit property in favour of plaintiff and received the sum of Rs.61,000/- as sale consideration on the said date? OPP
2. If issue No.1 is proved whether plaintiff always remained ready and willing to perform his part of contract under the agreement to sell? OPP
3. If issues No.1 & 2 are proved whether plaintiff is entitled to specific performance of the agreement to sell? OPP
4. Whether suit is not maintainable? OPD
5. Whether plaintiff is estopped from filing the suit due to his act and conduct? OPD
6. Relief.

5. Counsel for the appellant-plaintiff examined PW1-Gurdial Sharma, Deed Writer, PW2-Gopi Ram Numberdar, PW3-Sakunt Kumar, Registry Clerk in the office of Sub-Registrar, Mahendergarh and the plaintiff himself appeared in the witness box as PW4 and proved agreement to sell Ex.P1 dated 19.6.2003, copy of legal notice dated 19.6.2012 Ex.PA, postal receipt Ex.PB, Jamabandi for the year 2008-09 Ex.PC and affidavit of Dharambir Ex.PW3/A.

6. To rebut the aforesaid evidence led by the appellant-plaintiff, the defendant himself stepped into the witness box as DW2 and also

examined DW1-Pawan, DW3-Jaiveer Singh Yadav, Handwriting and Fingerprint Expert and also proved writing Ex.DW1/B, report of Hand Writing Expert Ex.DW3/B and enlarged photographs of disputed signatures Ex.DW3/C to Ex.DW3/I.

7. Learned trial Court after going through the entire evidence and hearing the counsel for the parties, came to the conclusion that agreement to sell Ex.P1 was executed by the respondent-defendant in favour of the appellant-plaintiff on 19.6.2003 with regard to suit property and the entire sale consideration was also received by the vendor from the appellant-plaintiff at the time of execution of the said agreement to sell. The learned trial Court also gave findings that the appellant-plaintiff was ready and willing to perform his part of the contract. However, learned trial Court while declining the relief of specific performance of contract, granted alternative relief to the appellant-plaintiff and decreed the suit for recovery of ₹ 61,000/- along with interest.

8. Being aggrieved, the appellant-plaintiff filed an appeal with prayer that the suit filed by the appellant-plaintiff for specific performance of the contract be decreed but the appeal was dismissed by the Court of learned District Judge, Narnaul vide judgment dated 9.9.2017 while confirming the findings recorded by the learned trial Court.

9. Still being not satisfied, the appellant-plaintiff has filed the present appeal.

10. Counsel for the appellant-plaintiff, while assailing the judgment of the learned trial Court whereby relief for specific performance of agreement dated 19.6.2003 was not granted by the learned trial Court and judgment dated 9.9.2017 whereby the appeal filed by the appellant was

dismissed by the learned District Judge, Narnaul, submits that execution of the agreement to sell dated 19.6.2003 Ex.P1 stands fully proved on record and further, the appellant-plaintiff was found to be ready and willing to perform his part of the contract. It is further contended that the entire sale consideration was already paid by the appellant-plaintiff and the possession of suit property was delivered to the plaintiff by the respondent-defendant; that thus there was no ground for the learned trial Court to decline the relief of grant of specific performance in favour of the appellant-plaintiff. It is further submitted that even the first appellate Court also fell into error while dismissing the appeal filed by the appellant-plaintiff. So, prayer is made that the present appeal be allowed.

11. I have considered the submissions made by the counsel for the appellant.

12. Learned Trial Court after appreciating the entire evidence rightly came to the conclusion that execution of the document Ex.P1 dated 19.6.2003 stands fully proved and that at the time of execution of the said document, amount of ₹ 61,000/- was received by the respondent-defendant from the appellant-plaintiff.

13. Admittedly, the suit seeking relief of specific performance of the aforesaid agreement was filed on 16.7.2012 i.e. after gap of 9 years of the execution of document Ex.P1. Even the legal notice which was served to the respondent-defendant before filing of the suit is dated 19.6.2012.

14. The appellant-plaintiff filed suit for specific performance prior to amendment of 2018. The said amendment may not be applicable retrospectively as has been held by Hon'ble Supreme Court in Civil Appeal

Projects decided on 25.8.2022.

15. Undisputedly, the appellant-plaintiff is real brother of the respondent defendant. In case intention of the respondent-defendant was to sell the suit property, then there was no impediment for the parties to get executed and registered the sale deed on the basis of document Ex.P1 on the same very day as the entire amount of ₹ 61,000/- was paid to the respondent-defendant by the appellant-plaintiff. Further, the appellant-plaintiff has not led any reasonable and reliable evidence to show that prior to serving of the aforesaid notice dated 19.6.2012, he ever made any genuine request to the respondent-defendant to execute the sale deed in his favour on the basis of document Ex.P1 dated 19.6.2003. This Court is of the view that the appellant-plaintiff should have pursued his remedy with promptitude and diligence. It was not enough to assert his right by issuing notice dated 19.6.2012. The appellant-plaintiff should have taken steps to enforce his right and his inaction and indifference for a period of 9 years without making any attempt to enforce his right and the said conduct of the appellant-plaintiff also goes against him. The suit for specific performance being filed prior to amendment of 2018, the jurisdiction to grant such decree is discretionary and the Courts below were not bound to grant such relief merely because it was lawful to do so. In the instant case, both the Courts below rightly exercised their discretion in a judicious manner and did not grant relief of specific performance while decreeing the suit of the appellant-plaintiff for recovery of ₹ 61,000/- along with interest and costs by way of alternative relief.

16. In view of above, this Court does not see any reason to disagree with the findings recorded by both the Courts below. No question of law

muchless substantial question of law arises for consideration by this Court.
Consequently, the appeal stands dismissed.

(KARAMJIT SINGH)
JUDGE

November 21, 2023
Paritosh Kumar

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