

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

RSA-1866-2018 (O & M)
Date of decision: 27.07.2023

AKASH JAIN AND ANR

...Appellants

V/s

RUPINDER SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Shukla, Advocate
 for the appellants.

HARKESH MANUJA J. (ORAL)

By way of present appeal, challenge has been made to the judgments and decrees dated 28.04.2015 and 17.07.2017 passed by the Courts below, whereby, suit for recovery filed at the instance of appellants stands dismissed.

2. Briefly stating the facts of the case are that an agreement to sell came to be executed between the appellants-plaintiffs and the respondent-defendant on 08.02.2006, pertaining to the land situated in village Ghullu Majra, District Patiala with appellants-plaintiffs being the purchasers and the respondent-defendant as the owner. The total amount of sale consideration was Rs.16.60 lacs per acre, out of which, Rs.14 lacs were paid as an earnest money and 15.06.2006 was the last date for the execution of the sale deed.

3. It was further submitted in the plaint that the appellants-plaintiffs visited the office of the Sub-Registrar on the date fixed along with the balance sale consideration, but sale deed could not be executed.

Followed by that, the suit for recovery of earnest money with interest was filed with the averments that as per the terms of the agreement, the respondent-defendant could not forfeit the same.

4. On the other hand, the respondent-defendant contested the suit by filing written statement. The execution of the agreement in question besides the receipt of earnest money were admitted, however, it was submitted that the appellants-plaintiffs since were not ready to perform their part of the contract, thus, the earnest money rightly stood forfeited. It was also submitted that the appellants-plaintiffs were making lame excuses about non-availability of electric connection besides pointing out defects in the title of the respondent-defendant.

5. The trial Court vide its judgment and decree dated 28.04.2015 dismissed the suit while holding that the appellants-plaintiffs were not ready and willing to perform their part of the contract and thus, earnest money was rightly forfeited by respondent-defendant in accordance with the terms thereof.

6. Aggrieved of the judgment and decree dated 28.04.2015 passed by the Court of Civil Judge Senior Division, Fatehgarh Sahib, the appellants-plaintiffs filed first appeal, however, the same was also dismissed vide judgment and decree dated 17.07.2017.

7. While assailing the afore-mentioned judgments and decrees, learned counsel for the appellants-plaintiffs submits that the non-performance of agreement in question was primarily on account of fault attributable to the respondent-defendant and thus, he could not have forfeited the earnest money. In addition thereto, reliance has been placed upon a

decision of the Hon'ble Supreme Court in the case of *Satish Batra versus Sudhir Rawal 2013 (1) SCC 345*. Learned counsel also submits that a suit for recovery of earnest money filed on behalf of the purchaser-vendee, in case of default being attributable to the seller was maintainable.

8. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find much substance in the submissions made on behalf of the appellants-plaintiffs. Though, as per the law laid down in the case of *Satish Batra (supra)*, a suit for recovery filed at the instance of purchaser-vendee could be entertained, however, in the facts and circumstances of the present case, wherein, the appellants-plaintiffs have not been able to establish non-performance or obligations conferred upon the respondent-seller under the agreement to sell by him, a simplicitor suit for recovery was not maintainable. The appellants-plaintiffs never sought possession by way of specific performance seeking enforcement of the agreement to sell dated 08.02.2006 and the only reason mentioned was non-providing of electric connection and motor to the land in question, which even otherwise could have been got enforced through the relief of mandatory injunction, besides prayer for specific performance.

9. Moreover, in the present case, the agreement in question was executed on 08.02.2006 and the target date was 15.06.2006, however, the suit was filed after more than two and half years on 03.02.2009 and that too, without there being any explanation for the delay and laches or even seeking relief of possession by way of specific performance, which clearly reflects upon the readiness and willingness of the appellants-plaintiffs as regards performance of the agreement in question though suit was well within

limitation.

10. Equally important, from the evidence available on record, it was established that the electric connection was installed in the suit property on 22.01.2007 i.e. almost 2 years prior to the date of filing of the suit for recovery and thus, the excuse set-up by the appellants-plaintiffs regarding non-performance of their obligations under the agreement to sell dated 08.02.2006 or even asking for its specific performance was wholly misconceived.

11. In view of the discussion made hereinabove, finding no illegality or perversity in the reasoning recorded by the Courts below, the present appeal is without any merit and the same is hereby dismissed.

27.07.2023
manisha

(HARKESH MANUJA)
JUDGE

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