

2023:PHHC:095949
**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2081-2018 (O&M)
Date of decision: 26.07.2023

Surjit Singh through Special Power of Attorney Navneet Singh

..Appellant

Versus

Kewal Singh

.Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Parvez Chugh, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by both the courts below is challenged by the plaintiff in this Regular Second Appeal. His suit for grant of decree of possession by way of specific performance of the agreement to sell has been dismissed by both the courts below.

2. Some relevant facts are required to be noticed to comprehend the controversy involved in the present case that requires adjudication. It is not in dispute that the defendant entered into an agreement to sell with the plaintiff with respect to 7 acres land at the rate of Rs.15,10,000/- per acre for a total sale consideration of Rs.1,05,70,000/-. The land was pledged with the Bank. It is the case of the plaintiff that possession of 6 acres of land was delivered and the plaintiff paid Rs.7,10,000/- on 13.04.2009 and Rs.38,00,000/- on 30.04.2009. As per the terms of agreement to sell, another amount of Rs.15,00,000/- was payable on or before 30.11.2009 and the defendant

had to get the mortgage redeemed before the registration of the sale deed.

3. The defendant, while contesting the suit, claims that a previous suit was filed by the plaintiff and hence, the subsequent suit is barred under Order II Rule 2 of the Code of Civil Procedure, 1908. It is also the case of the defendant that the plaintiff is a property broker and time was the essence of the contract. The plaintiff failed to pay the third instalment i.e Rs.15,00,000/- on or before 30.11.2009, which resulted in loss to the defendant and he had also entered into an agreement to purchase 16 kanals 8 marlas of land from someone else.

4. Both the courts, on appreciation of evidence, dismissed the suit filed by the plaintiff.

5. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

6. Learned counsel representing the appellant submits that the findings of the courts below with regard to the non-maintainability of the suit under Order II Rule 2 (hereinafter referred to as 'the CPC') is incorrect as the first suit was only for grant of decree of permanent injunction when the plaintiff apprehended that the defendant will alienate the property. He submits that before the agreed date for execution and registration of the sale deed i.e 31.01.2010, the plaintiff could not file a suit for specific performance of the agreement to sell.

7. At this stage, on a Court question, the learned counsel representing the appellant admits that the plaintiff has failed to pay

Rs.15,00,000/- as agreed on 30.11.2009, however, he submits that payment of Rs.15,00,000/- was not made as the plaintiff had filed the suit for injunction and defendant did not redeem the mortgage.

8. As per the terms of the agreement to sell, the defendant was required to redeem the mortgage before the registration of the sale deed i.e 31.01.2010. The plaintiff had agreed to pay an additional amount of Rs.15,00,000/- on 30.11.2009. Admittedly, the plaintiff committed that default. Moreover, it has come on record that in the previous suit filed by the plaintiff, the defendant offered to get the sale deed registered in favour of the plaintiff, in accordance with the agreement to sell. However, the plaintiff failed to avail the aforesaid offer.

9. Keeping in view the aforesaid facts, the argument of the learned counsel representing the appellant, on the correctness of the findings of fact arrived at by the courts below, with regard to Order II Rule 2 of the CPC, is not required to be examined as the plaintiff admittedly committed default of payment and he failed to capitalize on the offer made by the defendant in the suit filed by the plaintiff for grant of injunction. Hence, no ground to interfere is made out.

10. Dismissed.

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

26.07.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE