

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.147 of 2019 (O&M).  
Date of Decision: 30.11.2023.

Satish Kumar Mittal

....Appellant.

Versus

Om Parkash and others

....Respondents.

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CORAM: HON'BLE MR. JUSTICE LALIT BATRA

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**Present:** Mr. Rakesh Kumar Sharma, Advocate for appellant.

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Lalit Batra, J.

This regular second appeal has been filed by appellant/plaintiff impugning the legality of judgment and decree dated 30.09.2014 rendered by learned Civil Judge (Junior Division), Faridabad, vide which his suit for possession by way of specific performance of agreement to sell dated 21.10.2005, declaration with consequential relief of prohibitory injunction and in the alternative a decree for recovery of Rs.5,50,000/- with future interest @ 24% per annum, was dismissed. Appellant/plaintiff is also challenging judgment and decree dated 11.11.2016 passed by learned Additional District Judge, Faridabad, partly allowing the appeal preferred by him against judgment and decree dated 30.09.2014, vide which suit was partly decreed with costs and decree for recovery of Rs.1,00,000/- alongwith *pendentelite*

and future interest @ 18% per annum from the date of filing of the suit till realization, was passed in his favour and against defendant No.1.

2. Precisely, the case of appellant/plaintiff is that respondent/defendant No.1 entered into an agreement dated 21.10.2005 to sell his 1/3<sup>rd</sup> share in the land comprised in Khewat/Khata No.117/132, Rectangle No.28, Killa No.5(8-0) and Khatoni No.133, Rectangle No.28, Killa No.4(8-0), total land measuring 16 Kanals, situated within the revenue estate of village Sarurpur, Tehsil Ballabhgarh, District Faridabad (hereinafter to be referred as 'suit property'), in favour of appellant/plaintiff for a total sale consideration of Rs.5,50,000/-. Out of the total sale consideration, Rs.1,00,000/- was paid by appellant/plaintiff to respondent/defendant No.1 as earnest money. As per above said agreement, respondent/defendant No.1 was required to execute the sale deed on or before 15.02.2006 on receipt of balance sale consideration. On 15.02.2006, appellant/plaintiff appeared before Sub-Registrar alongwith the balance sale consideration, however, respondent/defendant No.1 did not turn up to perform his part of contract. Legal Notice dated 28.05.2007 was served upon respondent/defendant No.1 calling upon him to appear before Sub Registrar on or before 12.06.2007 for execution of sale deed, but to no avail. Lateron, appellant/plaintiff came to know that respondent/defendant No.1 in violation of terms and conditions of agreement to sell dated 21.10.2005, has sold the suit property to respondent/defendant No.2, vide registered Sale Deed dated 14.06.2007 and Mutation bearing No.2330 in this regard was sanctioned in favour of respondent/defendant No.2. Thus, appellant/plaintiff was constrained to file suit against respondents/defendants, as detailed above.

3. On notice of the suit, respondent/defendant No.1-Om Parkash appeared and filed written statement raising therein preliminary objections *inter alia* of maintainability of suit, locus *standi* and concealment of facts from the Court. On merits, respondent/defendant No.1 submitted that he had borrowed a sum of Rs.1,00,000/- from appellant/plaintiff and latter had obtained his signatures and thumb impressions on some blank papers for execution of a mortgage deed. The appellant/plaintiff was aware that respondent/defendant No.1 had already executed an agreement to sell the suit property in favour of Nem Chand on 31.07.2003 and sale deed could be executed in his favour or his nominee. Lateron, instead of Nem Chand, he executed the sale deed in favour of respondent/defendant No.2 and prayed for dismissal of the suit.

Respondent/defendant No.2 filed separate written statement contending therein that she is *bonafide* purchaser of the suit property. She had no knowledge at the time of execution of sale deed in her favour regarding any agreement to sell already arrived at between appellant/plaintiff and respondent/defendant No.1. It was, thus, submitted that sale deed executed in her favour and Mutation No.2330 are legal and valid and the same cannot be declared null and void.

During the course of trial, appellant/plaintiff came to know that respondent/defendant No.2 had sold the suit property to Pushpa Muniyal, vide Sale Deed dated 19.09.2007, therefore, an application under Order I Rule 10 CPC was moved by appellant/plaintiff for impleadment of said Pushpa Muniyal as party defendant, which was allowed by learned Trial Court and

subsequent purchaser Pushpa Muniyal was impleaded as respondent/defendant No.3.

Respondent/defendant No.3 filed written statement contending therein that suit has been filed by appellant/plaintiff in collusion with respondent/defendant No.1. Respondent/defendant No.3 is *bonafide* purchaser of the suit property, vide registered Sale Deed bearing Vasika No.6341 dated 19.09.2007 and she has constructed a house over the suit property and is residing therein. Denying that any agreement had taken place between appellant/plaintiff and respondent/defendant No.1 and further denying payment of Rs.1,00,000/- by appellant/plaintiff to respondent/defendant No.1, dismissal of the suit was prayed for.

4. Rejoinders to the written statements were not filed and on the rival contentions of the parties, following issues were settled:-

(1) Whether the defendant No.1 had agreed to sell the suit property to the plaintiff for a sale consideration of Rs.5,50,000/- vide agreement to sell dated 21.10.2005 and had agreed to execute the sale deed in pursuance thereof in favour of the plaintiff on or before 15.2.2006 on receipt of the balance sale consideration? OPP.

(2) Whether the defendant No.1 had received an earnest money of Rs.1,00,000/- from the plaintiff as part performance as agreement to sale? OPP.

(3) Whether the plaintiff has been ready and willing to perform? OPP.

- (3-A) Whether the sale deed no.3274 dated 14.06.2007 executed by defendant No.1 in favour of defendant No.2 and the subsequent mutation No.2330 dated 31.7.2007 in pursuance of the aforesaid sale deed are illegal, null and void, as alleged? OPP.
- (4) Whether the plaintiff has no locus *standi* or cause of action to file this suit? OPD.
- (5) Whether the suit is not maintainable in the present form?OPD.
- (6) Whether the plaintiff concealed true and material facts, if so its effect? OPD.
- (7) Relief.
5. Both the parties led oral and documentary evidence to substantiate their respective pleadings.
6. Considering the evidence available on the record and submissions made on behalf of the parties, learned Trial Court, vide judgment and decree dated 30.09.2014, dismissed the claim of appellant/plaintiff in toto.
7. Feeling aggrieved by the judgment and decree dated 30.09.2014 passed by learned Trial Court, appellant/plaintiff preferred appeal, which was partly allowed by learned Additional District Judge, Faridabad, vide judgment and decree dated 11.11.2016, whereby suit has been partly decreed with costs and decree for recovery of Rs.1,00,000/- alongwith *pendentelite* and future interest @ 18% per annum from the date of filing of the suit till realization has been passed in favour of appellant/plaintiff and against respondent/defendant No.1.

8. Being unsatisfied with the judgment and decree dated 30.09.2014 passed by learned Trial Court and judgment and decree dated 11.11.2016 rendered by learned lower Appellate Court, appellant/plaintiff has preferred the instant second appeal.

9. The submissions made by learned counsel for appellant/plaintiff have been considered and record perused.

10. Learned counsel for appellant/plaintiff has vehemently argued that appellant/plaintiff by leading cogent and convincing evidence has proved his case in entirety. He further contended that once vital issues No.1 and 2 were decided in favour of appellant/plaintiff, therefore, issue No.3 should have been decided in his favour, however, learned Trial Court has taken totally adverse inference while deciding issue No.3 against appellant/plaintiff and in favour of respondents/defendants regarding readiness and willingness of appellant/plaintiff to perform his part of contract. Appellant/plaintiff proved his readiness and willingness to perform his part of contract by serving Legal Notice dated 28.05.2007 (Ex.P-6), but respondent/defendant No.1 was not ready and willing to perform his part of contract and having dishonest intention to grab the earnest money of appellant/plaintiff further executed the sale deed of suit property in favour of respondent/defendant No.2, which is illegal. He further contended that execution of agreement to sell (Ex.P-1) and receipt (Ex.P-2) was admitted by respondent/defendant No.1, when he appeared in the witness-box as DW-1. Further, appellant/plaintiff alongwith balance sale consideration had marked his presence before Sub Registrar for performance of his part of contract, but respondent/defendant No.1 failed to

perform his part of contract. After expiry of last date for execution and registration of sale deed, appellant/plaintiff orally requested respondent/defendant No.1 to extend the date for execution and registration of sale deed and further served registered AD Legal Notice dated 28.05.2007 upon respondent/defendant No.1 calling upon latter to appear before Sub Registrar on or before 12.06.2007 for execution and registration of sale deed but instead of that respondent/defendant No.1 sold the suit property to defendant No.2, vide registered Sale Deed dated 14.06.2007 and thereafter vide Sale Deed dated 19.09.2007, respondent/defendant No.2 had further sold the suit property in favour of respondent/defendant No.3. He further urged that appellant/ plaintiff was always ready and willing to perform his part of contract, whereas default had occurred at the instance of respondent/defendant No.1. He further urged that impugned judgments and decrees are based on conjectures and surmises. He further argued that learned Trial Court erred in dismissing the suit of appellant/plaintiff in toto and even learned lower Appellate Court committed error by passing a money decree only and declining the main relief of specific performance of agreement.

11. The arguments of learned counsel for appellant/plaintiff may appear to be attractive but are not convincing and meritorious.

12. Learned Courts below after having scrutinized the testimonies of PW-1 Sanjeev Singh, Advocate, scribe of agreement to sell (Ex.P-1), PW-5 Satish Kumar (plaintiff), PW-6 Jagdish Parshad and PW-7 Sant Ram, attesting witnesses of agreement to sell and receipt (Ex.P-1 and Ex.P-2), and especially the admission of respondent/defendant No.1 during his cross-examination,

have rightly come to the conclusion that execution of agreement and payment of earnest amount are duly proved and for the said reason alone, issues No.1 and 2 stand proved.

13. Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act'), lays down that the person seeking specific performance of the contract, must file a suit wherein he must plead and prove that he has performed or has been ready and willing to perform the essential terms of the contract, which are to be performed by him. The specific performance of the contract cannot be enforced in favour the person who fails to aver and prove his readiness and willingness to perform essential terms of the contract. Explanation (ii) to clause (c) of Section 16 further makes it clear that plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The compliance of the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. Hon'ble Supreme Court in case Umabai and Another vs. Neelkanth Dhondiba Chavan (Dead) by LRs and Anr., (2005)6 SCC 243, while dealing with provisions of Section 16(c) of the Act, has held as under:-

*“It is well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.”*

15. Keeping in view provisions of Section 16(c) of the Act and settled proposition of law, in the instant case appellant/plaintiff has failed to prove his readiness and willingness to perform his part of contract and to arrive at such conclusion, reasons are enumerated as under :-

(i) In terms of agreement to sell dated 21.10.2005 (Ex.P-1), sale deed was to be executed by respondent/defendant No.1 on or before 15.02.2006. Appellant/plaintiff has taken the stand that on 15.02.2006, he visited the office of Sub Registrar alongwith balance sale consideration of Rs.4,50,000/-, but respondent/defendant No.1 failed to turn up and as such made default to perform his part of contract. Though appellant/plaintiff has categorically averred in the plaint that on the target date i.e. 15.02.2006, he had gone to the office of Sub Registrar alongwith balance sale consideration, but so substantiate said fact, no cogent and reliable evidence has been led by him. As a matter of fact, appellant/plaintiff did not lead any cogent evidence to establish

that he had appeared before Sub Registrar on 15.02.2006. In ordinary course, a proposed vendee gets his presence marked by getting executed and attested his affidavit in order to show his presence before Sub Registrar, but no such course was adopted by appellant/plaintiff and as such there is nothing on the record to depict that on the target date (15.02.2006), he had gone to the office of Sub Registrar and that too alongwith balance sale consideration to perform his part of the contract.

(ii) In case appellant/plaintiff was unable to appear before Sub Registrar on the target date (15.02.2006) for one reason or the other, he could have taken remedial steps at the earliest but a perusal of the record reveals that he did not make any effort to contact or communicate with respondent/defendant No.1 for considerable period. After sleeping over the matter for about quarter past one year, appellant/plaintiff got served Legal Notice dated 28.05.2007 (Ex.P-6) through registered post (postal receipt Ex.P-7) and thereby called upon respondent/defendant No.1 to appear before Sub Registrar on or before 12.06.2007 to execute the sale deed. It is pertinent to mention here that though above said fact has been averred in the plaint but no iota of evidence has been led by him to show/record his presence before the Sub Registrar on 12.06.2007. Even otherwise, factum of serving notice dated 28.05.2007 after considerable gap of quarter past one year from the target date (15.02.2006), does not suffice the cause

of appellant/plaintiff and, thus, no benefit thereof can be derived to overcome the considerable gap of time.

(iii) As discussed above, appellant/plaintiff has utterly failed to prove that on the scheduled date i.e. 15.02.2006, he was ready and willing to perform his part of contract. It appears that serving of Legal Notice dated 28.05.2007 (Ex.P-6) was mere an eyewash and in case appellant/plaintiff was sincere in his approach to perform his part of contract in pursuant to agreement to sell dated 21.10.2005 (Ex.P-1), he could have instituted civil suit seeking specific performance of agreement to sell at the earliest but for that purpose as well, after serving Legal Notice dated 28.05.2007 (Ex.P-6), he waited for about eight (08) months and then filed the present civil suit on 25.01.2008. In these circumstances, it can be easily inferred that appellant/plaintiff was not ready and willing to perform his part of contract. Since appellant/plaintiff has failed to prove his readiness and willingness to perform his part of contract, in this scenario, he is not entitled to get the agreement specifically enforced.

16. Learned lower Appellate Court while affirming the findings of learned Trial Court on issues No.1 and 2, has given the findings that though respondent/defendant No.1 has denied the execution of agreement to sell dated 21.10.2005 (Ex.P-1), but he has taken the plea that he had obtained loan of Rs.1,00,000/- from appellant/plaintiff and since it is not the case of respondent/defendant No.1 that he has repaid the loan amount and in these

circumstances, appellant/plaintiff is entitled for refund of earnest money of Rs.1,00,000/- alongwith interest @ 18% per annum from the date of filing of the suit till realization in view of law laid down by Hon'ble Supreme Court in **Hemanta Mondal and others vs. Sri Ganesh Chandra Naskar, 2015 AIR (Supreme Court) 3757**. Thus, learned lower Appellate Court rightly modified findings of learned Trial Court and held that appellant/plaintiff is entitled to recover a sum of Rs.1,00,000/- alongwith *pendentelite* and future interest @ 18% per annum from respondent/defendant No.1 from the date of filing of the suit till realization. However, the claim of appellant/plaintiff to get the agreement to sell specifically enforced was rightly declined.

17. Thus, there being no reason to interfere in the findings recorded by learned lower Appellate Court and there being no merits in the appeal, the same is dismissed.

18. Since the main appeal has been dismissed, pending application(s), if any, also stands dismissed.

(LALIT BATRA)  
JUDGE

30.11.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No