

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****236****RSA No.1990 of 2011
Reserved on : 09.09.2024
Date of Decision : 15.10.2024**

Chander Pal Singh

....Appellant

VERSUS

Rattan Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Keshav Pratap Singh, Advocate for the appellant.

Ms. Arandeep Kaur Sidhu, Advocate for
Mr. Rajbir Singh, Advocate for the respondents.**ALKA SARIN, J.**

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgement and decree dated 28.04.2010 passed by the Trial Court and the judgement and decree dated 15.02.2011 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for specific performance of agreement to sell dated 15.01.2003. It was averred in the plaint that the agreement to sell was for 04 Kanals of land which was agreed to be sold by the defendant-respondents to the plaintiff-appellant for a sum of Rs.2,25,000/- and Rs.10,000/- was paid as advance consideration on the date of the agreement to sell itself i.e. 15.01.2003. The sale deed was to be executed on 15.06.2003. It was further the case that the plaintiff-appellant has always been ready and willing to perform his part of the contract. It was further the case set up that the relations between the plaintiff-appellant and the defendant-respondents were cordial

and that the plaintiff-appellant had been looking after the suit land as joint *Khatedar*. It was further averred in the plaint that closer to the date of execution of the sale deed, defendant-respondent No.1 in the presence of one Vikram requested for a further sum of Rs.50,000/- as they were in dire need of money, which was paid by the plaintiff-appellant in good faith. The sale deed was to be executed the next day i.e. on 15.06.2003. However, the defendant-respondents did not turn up as promised. It was conveyed to the plaintiff-appellant by defendant-respondent No.1 that the defendant-respondent No.2 – Chattar Singh – under the influence of his in-laws, was not cooperating with him and wanted time to complete the deal. It was further the case that the final refusal to execute the sale deed was on 24.11.2005. Hence, the suit. The defendant-respondents in their written statement took the stand that the property was purchased by them vide a registered sale deed on 15.01.2003 and there was no question of selling the same by entering into an agreement to sell qua the same on that very date i.e. 15.01.2003. It was further the case that that the defendant-respondents had purchased the land on 15.01.2003 for which they were to pay Rs.90,000/-. They had withdrawn Rs.65,000/- from the bank and they were short of Rs.25,000/-. Rs.10,000/- was borrowed from the plaintiff-appellant and their signatures were taken on blank papers. It was further averred that there was no question of readiness and willingness as the plaintiff-appellant was never ready and willing to perform his part of the contract. It was further denied that defendant-respondents had taken an amount of Rs.50,000/- on 14.06.2003 as part payment. Replication was filed reiterating the assertions made in the plaint and denying those of the written statement. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to get the possession of the suit land by way of specific performance of contract ? OPP
2. Whether the suit is bad for want of concealment of material facts by the plaintiff from the Court ? OPP
3. Whether the present suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether this Court has no jurisdiction to entertain the present suit ? OPD
6. Relief.

3. The Trial Court dismissed the suit vide judgment and decree dated 28.04.2010 holding the plaintiff-appellant not ready and willing to perform his part of the contract. Aggrieved by the judgment and decree dated 28.04.2010 passed by the Trial Court, an appeal was preferred which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 15.02.2011. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that all the other issues were decided in favour of the plaintiff-appellant. However, only on the issue of readiness and willingness the suit has been dismissed erroneously by both the Courts. It is further the contention that Rs.10,000/- was paid as earnest money and Rs.50,000/- was paid subsequently on 14.06.2003 by the plaintiff-appellant to the defendant-respondents.

5. *Per contra* learned counsel for the defendant-respondents would contend that concurrently it has been found that the plaintiff-appellant was never ready and willing to perform his part of the contract and that both the Courts have given sound reasoning for dismissing the suit of the plaintiff-appellant.

6. I have heard learned counsel for the parties.

7. In the present case the agreement to sell was dated 15.01.2003 (Ex.PW1/B). It was averred in the plaint that Rs.10,000/- was paid as earnest money and Rs.50,000/- at a later stage. However, no such evidence came on the record to show that the said amount of Rs.50,000/- was paid. It was the case of the plaintiff-appellant that the target date in the present case was 15.06.2003 and that the defendant-respondents did not come present to get the sale deed executed. However, there is no evidence to show that the plaintiff-appellant himself had got his presence marked before the Sub-Registrar on 15.06.2003. Further still, the suit itself was filed on 24.11.2005. Though, as per the case set up by the plaintiff-appellant himself, the defendant-respondents did not come present on 15.06.2003 to get the sale deed executed. The legal notice which preceded the filing of the suit was also not proved in accordance with law. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the amount of Rs.50,000/- was paid as alleged or that the plaintiff-appellant was ready and willing to perform his part of the contract.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO