



237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4375-2016 (O&M)
Date of decision : 05.05.2025

Roshan Lal and anotherAppellants

Versus

Ranbir SinghRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.S. Mamli, Advocate
for the appellants.

Mr. S.S. Gill, Advocate with
Mr. Yajat Gill, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

On 8th of January, 2020, following order was passed :

“Learned counsel for the parties, on instructions from their respective parties; have submitted that the parties have entered into a settlement, under which the appellants have offered to pay the interest @ 24% per annum on the amount of Rs.11.5 lakhs, which was received by them and also to pay interest @ 9% per annum on the amount, which is lying deposited by the respondent before the Court below for getting the sale deed executed through the Court. With these terms, the appellants have offered to return the money received by them to the respondent/plaintiff. The money lying deposited with the Court below would be taken back by the respondent from the Court.

The respondent/plaintiff has also agreed to take the money, as mentioned above, as full and final settlement of the claim qua the agreement to sell involved in the case.



An adjournment is prayed for; to place on record a formal agreement in this regard; along with the proof of payment of the money by the appellants to the respondent.

Adjourned to 12.3.2020.”

2. Counsel representing the respondents submits that the aforesaid settlement recorded, could not fructify. The counsels have been heard on merits.

3. Defendants are in second appeal. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position before the Court of the First instance, i.e. the appellants as ‘defendants’ and the respondent as ‘plaintiff’.

4. The plaintiff filed suit for possession by way of specific performance claiming that defendants, who are owners in possession of the suit land measuring 48 Kanals as per *Jamabandi* for the year 2008-2009, agreed to sell the suit property to the plaintiff @ ₹6,00,000/- per acre. Agreement to sell dated 29th of December, 2010, was executed by defendants in his favour in the presence of attesting witnesses namely Subhash Chand and Rajesh Kumar. Earnest money of ₹10,00,000/- was paid at the time of execution of the agreement to sell by the plaintiff to the defendants. As per the agreement to sell, sale deed was to be executed by defendants in favour of the plaintiff on or before 28th of April, 2011. Prior to the agreed date for execution of sale deed, target date was extended to 29th of December, 2011 vide writing dated 23rd of April 2011. Plaintiff thus, claimed that defendants in all received an amount of ₹11,50,000/-. On the appointed date i.e. 29th of



December, 2011, the plaintiff remained present before Sub Registrar, Bhuna with the balance sale consideration and other expenses. However, defendants failed to turn up. Plaintiff further claims that on 7th of January, 2012, he served legal notice through his counsel upon the defendants requesting them to come present before the Sub Registrar on 31st of January, 2012 to execute the sale deed. Plaintiff further pleaded that on 31st of January, 2012, he again remained present before the Sub Registrar with the requisite amount. However, defendants failed to turn up. By way of the present suit, the plaintiff thus prayed for decree of possession by way of specific performance of agreement to sell dated 29th of December, 2010.

5. Suit was contested by the defendants. Execution of agreement to sell was denied. Defendants however claimed that the property in dispute is a joint property of Mangat Ram (father of the plaintiff), the defendants and some other share-holders. The parties are close relatives. Defendants borrowed a sum of ₹5,00,000/- from plaintiff in the month of December, 2010, to be returned along with interest @ 1% per month. As a security for repayment of the loan amount, plaintiff asked defendants to put signatures on blank stamp-papers. It was assured that the same would be returned to them on repayment of loan. Defendants returned the entire amount with interest in June, 2011. Plaintiff assured that the blank signed stamp-papers would not be used by him. The defendants, thus, claim that the said stamp-papers have been misused by the plaintiff to create the agreement to sell in question.



6. The suit filed by the plaintiff was put to trial by the Court of the First Instance, framing following issues :

- “1. *Whether the defendants entered into a valid agreement to sell dated 29.12.2010 for sale of 48 Kanal 0 Marla land situated in village Nehla, District Fatehabad for a consideration at the rate of Rs.6,00,000/- per acre and received Rs.10,00,000/- as earnest money and now the plaintiff is entitled to specific performance of the aforesaid agreement on payment of balance sale consideration of Rs.24,50,000/- as prayed for? OPP*
2. *If issue no.1 is decided in favour of plaintiff then plaintiff is entitled to possession of the suit land and injunction as prayed for? OPP*
3. *Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
5. *Whether the agreement is false, forged, fictitious and result of collusion as prayed for? OPD.*
6. *Relief.”*

7. The two attesting witnesses of the agreement to sell namely Rajesh Kumar and Subhash Chand were examined by the plaintiff as PW3 and PW4. Stamp Vendor Raj Kumar was examined as PW-1.

7.1. After analysing the evidence threadbare Trial Court while deciding issues No.1, 2 and 5 together, held that the plaintiff successfully proved agreement to sell, Exhibit P-1 and extension, Exhibit P-2. It has been proved on record that the earnest money of ₹11,50,000/- i.e ₹10,00,000/- + ₹1,50,000/- was paid by the plaintiff to the defendants. Trial Court further held that from the conduct of the plaintiff, it is evident that he



always remained ready and willing to perform his part. The suit filed by the plaintiff, was decreed.

8. Dissatisfied, defendants impugned judgment & decree passed by the Court of the First Instance before the Lower Appellate Court.

9. The Lower Appellate Court has affirmed the findings recorded by the Trial Court.

10. Mr. Mamli has assailed the findings recorded by the Courts below, claiming that the plaintiff failed to prove source of ₹10,00,000/- that he claims to have paid to the defendants, in cash at the time of execution of the agreement to sell. He submits that it has come on record that the market price of the land was much more as compared to the agreed consideration as per the agreement to sell. A man of ordinary prudence would not sell the land at a throwaway prices. He further submits that attesting witnesses are close relatives of the plaintiff being his brother and nephew. Thus, their testimony ought to have been discarded they being interested witnesses. Mr. Mamli further submits that there is no evidence brought on record by the plaintiff to prove his readiness and willingness and thus, the Courts below ought to have dismissed the suit filed by the plaintiff as there is no evidence to show that the plaintiff was in possession of the money that was required to pay for execution of the sale deed.

11. Per contra, counsel for the respondent/plaintiff submits that so far as signatures of the defendants on the agreement to sell are concerned, the same are not in dispute. Defendants as a defence pleaded that the blank-



signed papers have been utilized by the plaintiff for creation of agreement to sell. No evidence was led by the defendants to prove their defence. Rather the plaintiff examined attesting witnesses as well as the Stamp Vendor, who fully proved not only execution of the agreement to sell but also purchase of the stamp-papers by defendant Satish Kumar. Counsel for the respondent/plaintiff further submits that whole of the transaction was between a family and thus it was natural that the witnesses are from the family. The attesting witnesses are not only related to the plaintiff but also related to the defendants, as well. He further draws attention of this Court to the findings recorded by the Trial Court in Paras No.29 and 30, wherein specific finding w.r.t. readiness and willingness of the plaintiff, has been recorded.

12. I have heard counsel for the parties and have carefully gone through records of the case.

13. The star argument raised by Mr. Mamli w.r.t. absence of evidence on record to prove source of ₹10,00,000/-, claimed to have been paid by the plaintiff, at the time of execution of the agreement to sell, stands demolished by the defence pleaded by the defendants. The case of the defendants is that they borrowed a sum of ₹5,00,000/- in cash from the plaintiff. Thus, in view of pleaded case of the defendants that the plaintiff was in capacity to pay ₹5,00,000/- in cash to the defendants in December, 2010, the objection raised by Mr. Mamli pales into insignificance and cannot be taken cognizance of. Pure findings of fact have been recorded by the Courts below after appreciating the evidence led by the plaintiff in form of



testimony of the attesting witnesses and that of Stamp Vendor. They proved execution of agreement to sell in terms of Section 68 of the Indian Evidence Act, 1872. Thus, the finding recorded by the Courts below regarding execution of the agreement to sell and the extension being pure finding of fact, needs no interference and the same is ordered to be maintained.

14. So far as the issue of readiness and willingness is concerned, trite it is that no straight-jacket test can be laid down to ascertain readiness and willingness in the suits related to specific performance of agreement to sell. The same has to be gauged from the conduct of the parties, available on the file.

15. In the present case, the extended appointed date was 29th of December, 2011. Plaintiff has proved legal notice dated 7th of January, 2012 as Exhibit P-5 and the postal receipts as Exhibits P-7 & P-8. The receipt thereof, is not denied by the defendants. As per legal notice, Exhibit P-5, plaintiff requested defendants to come present before the Sub Registrar on 31st of January, 2012 to execute the sale deed in his favour. Plaintiff successfully proved his presence before the Sub Registrar on 31st of January, 2012, vide Exhibit P-6. The suit was promptly instituted on 10th of May, 2012. Plaintiff while appearing as PW-2, specifically stated in his affidavit that he always remained ready and willing to perform his part of the agreement. Not even a suggestion was put to him during cross-examination that he was not ready or willing to perform his part. In view thereof, this Court does not find any reason to interfere in the well reasoned findings



recorded by the Courts below regarding readiness and willingness of the plaintiff to perform his part.

16. Resultantly, finding no reason to interfere in the judgment and decree(s) passed by the Courts below, the instant appeal is ordered to be dismissed.

17. Pending application(s), if any, shall also stand disposed off.

May 05, 2025

**(Pankaj Jain)
Judge**

Dpr

Whether speaking/reasoned : Yes

Whether reportable : Yes