



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
253 RSA-14989-2018 (O&M)
Date of decision: 07.02.2025

Radhey Shyam

...Appellant(s)

Vs.

Bansi Lal

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Anil Kumar Saini, Advocate for
Mr. Varun Gupta, Advocate
for the appellant.

Mr. Jayant Yadav, Advocate for
Mr. P.R. Yadav, Advocate
for the respondent.

NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgment and decrees of the learned Courts below whereby the suit filed by the respondent/plaintiff for specific performance of Agreement to Sell dated 03.12.2010, has been decreed by the learned Additional Civil Judge (Sr. Division) Narnaul vide judgment and decree dated 23.02.2015. The appeal filed by the defendant against the above said judgment dated 23.02.2015, has been dismissed by the learned 1st Appellate Court, vide judgment and decree dated 04.05.2018.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant as "defendant" and the respondent as "plaintiff".



3. Brief facts of the case are that the present suit for specific performance was filed by the respondent/plaintiff on the averments that on 3.12.2010 the defendant entered into agreement to sell his 800/6983th share in the suit property fully described in para no.1 of the plaint in favour of the plaintiff for a sale consideration of Rs.20,00,000/- and received an amount of Rs.9,05,000/- as earnest money. It is next maintained that the date for execution of the sale deed was fixed as 8.4.2011. The terms of the agreement were reduced into writing and the writing was duly signed by the parties in the presence of attesting witnesses. It is further asserted that the possession of the suit property was also delivered to the plaintiff on the date of the execution of the agreement to sell. It is also stated that the plaintiff has always been ready and willing to perform his part of the contract and he remained present in the office of sub-registrar, on the stipulated day for execution of the sale deed i.e. 8.4.2011 alongwith the amount of balance sale consideration and other expenses. However, the defendant did not appear. Thus, the plaintiff got his presence marked before the Sub-registrar, Nangal Chaudhary. It is also stated that the plaintiff sent a legal notice dated 15.4.2011 to the defendant and requested the defendant to execute the sale deed of the suit property in favour of the plaintiff on 25.4.2011. It is further pleaded that the legal notice was received by the defendant but he did not appear in the office of Sub-Registrar, Nangal Chaudhary on 25.4.2011 for execution of the sale deed. Therefore, the



plaintiff got his presence marked before the Executive Magistrate. It is next maintained that the plaintiff sent another legal notice dated 3.5.2011 to the defendant requesting him to execute the sale deed in favour of the plaintiff on 9.5.2011. However, the defendant evaded the service of notice. It is further asserted that the plaintiff remained present in the office of Sub-Registrar, Nangal Chaudhary on 9.5.2011 but the defendant did not appear. Hence, the present suit.

4. Upon notice the appellant-defendant put in appearance and contested the suit on various grounds by denying that the defendant had executed any Agreement to Sell in favour of the plaintiff; that the Agreement was a result of fraud and misrepresentation; that the defendant is not bound by the same; it was denied that the physical possession of the suit property was delivered to the plaintiff on the day of execution of Agreement to Sell. It was further denied that the plaintiff had proved his readiness and willingness to perform the Agreement. No replication was filed by the plaintiff.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 08.02.2012:-

- “1. Whether defendant executed agreement to sell dated 3.12.2010 in favour of plaintiff qua the suit property? OPP*
- 2. Whether the plaintiff has paid Rs.9 lacs 5 thousand on 3.12.2010 out of total sale consideration of Rs.20 lacs? OPP.*
- 3. Whether plaintiff is/was ready and willing to perform the part of the contract? OPP.*



4. *If the above issues are to be proved whether plaintiff is entitled to the contract on the terms and conditions of the agreement to sell dated 3.12.2010? OPP.*
5. *Whether suit of plaintiff is not maintainable? OPD*
6. *Whether plaintiff has no cause of action to file the present suit? OPD.*
7. *Whether the suit of the plaintiff is time barred OPD*
8. *Whether plaintiff has filed false and frivolous suit? OPD*
9. *Relief.”*

6. On the basis of the pleadings, and the oral and documentary evidence adduced by the parties, the learned trial Court decreed the suit with costs vide judgment and decree dated 23.02.2015. The appeal filed by the defendant against the above said judgment dated 23.02.2015, has been dismissed by the learned 1st Appellate Court, vide judgment and decree dated 04.05.2018. Hence, the present second appeal.

7. Learned counsel for the appellant-defendant vehemently submits that the plaintiff had failed to establish his readiness and willingness to perform the contract. The defendant has categorically disputed the receipt of legal notice. Even no finding has been given by the learned trial Court regarding Issue No.3. Thus, the plaintiff has failed to prove his case on Issue No.3 which is core issue of the suit. In support learned counsel relies on judgment of Hon'ble Supreme Court in **“Sukhwinder Singh vs. Jagroop Singh and another”** Law Finder Doc ID#1673443 and **“Ravi Setia vs. Madan Lal and others”** Law Finder Doc ID#1597440.



8. It is next contended that the defendant never affixed his signatures on the Agreement dated 03.12.2010 and the signatures of the defendant have been taken by the plaintiff fraudulently. It is alleged that thus, the Agreement is the result of fraud and misrepresentation. It is categorically denied that the defendant signed the Agreement to Sell. It is accordingly prayed that the present appeal be allowed.

9. Per contra learned counsel for the plaintiff vehemently opposes the prayer made on behalf of the defendant and submits that the plaintiff had duly demonstrated his readiness and willingness to perform the contract. It is denied that the Agreement is a result of fraud and misrepresentation. It is accordingly prayed that the present appeal be dismissed.

10. No other argument is made on behalf of the parties.

11. I have heard learned counsel for the parties and perused the case file in great detail.

12. A two-fold argument has been raised on behalf of the appellant/defendant. First being that the plaintiff has failed to prove his case on Issue No.3 which is the core issue of the suit i.e. the plaintiff has failed to establish his readiness and willingness to perform his part of contract. I find no merit in the said argument as the record amply testifies to the readiness and willingness of the plaintiff to perform the contract.

13. As per the Agreement to Sell dated 03.12.2010 (Ex.P1) the date for execution of sale deed was fixed as 08.04.2011. The record



irrevocably establishes that the plaintiff was present in the office of Sub-Registrar Nangal Chaudhary on the said date for execution of the sale deed. This fact is proved from the affidavit of the plaintiff (Ex.PW3/B). It was the defendant who was not present.

14. Thereafter, the plaintiff sent a legal notice dated 15.04.2011 to the defendant whereby the next target date was 25.04.2011. On this date also the defendant did not appear. Another legal notice dated 05.05.2011 was sent to the appellant and a fresh target date 09.05.2011 was fixed. The appellant did not appear on this date as well. Subsequent to this target date the respondent-plaintiff filed suit for specific performance on dated 23.05.2011.

15. In regard to the above said legal notices, the testimony of PW7-Rajesh Kumar, Advocate is relevant who has deposed that he had sent legal notice (Ex.PW7/A) dated 15.04.2011 to the defendant on the asking of the plaintiff. PW7 has further deposed that he had sent reminder legal notice dated 05.05.2011 (Ex.PW7/B). Both the said legal notices were duly proved by the postal receipts (Ex.PW7/C and Ex.PW7/D) and registered envelope vide which second legal notice was received unserved as (Ex.PW7/E). Thus, the contention of the defendant that he did not receive the legal notices is belied by the evidence of PW7.

16. Learned counsel for the defendant can derive no benefit from the relied upon judgment in case of **Sukhwinder Singh (Supra)** as the same is distinguishable on facts and law inasmuch as in the



said case the plaintiff therein had not submitted his affidavit proving his presence in the office of Sub-Registrar on the stipulated date. Learned counsel can also not derive any benefit from the relied upon case of **Ravi Setia (supra)** as the same is distinguishable on facts inasmuch in the said case the plaintiff had sought to establish his readiness and willingness on the basis of a certificate produced by them from the Sub-Registrar. Whereas, in the present case the plaintiff had produced affidavit (Ex.PW3/B) which cannot be likened to a certificate. Further in the said case no other evidence was led by the plaintiff to demonstrate his readiness and willingness, including showing his continuous capacity for discharge of the balance consideration. In the present case that is not so. The plaintiff here had duly paid the earnest money of ₹9,05,000/-; and has also deposited the balance sale consideration of Rs.20,00,000/- on 28.12.2018 before the Civil Judge (Sr. Division) Narnaul. As such in the present case the plaintiff has amply demonstrated his readiness and willingness to perform the contract. The findings of the learned lower Appellate Court in this regard are as under:-

“...So far as the readiness and willingness of the plaintiff is concerned on the date fixed for the execution of the sale deed i.e. 8.4.2011 the plaintiff appeared before the Sub Registrar and marked his presence by way of affidavit Ex.PW3B. Pursuant to his legal notice the plaintiff also visited the office of Sub Registrar on 25.4.2011 and 9.5.2011 as per his affidavits Ex.PW3/C and Ex.PW3D. On the other hand there is nothing to show that defendant was also present before Sub registrar on the said dates. The present suit was filed by the plaintiff promptly thereafter on 23.5.2011. Learned trial court



has correctly held that readiness and willingness on the part of plaintiff is duly proved...”

17. It has next been argued on behalf of the appellant that the Agreement to Sell dated 03.12.2010 (Ex.P1) does not bear his signatures. This argument of the defendant is also liable to be rejected as no such plea has been taken by the defendant heretofore before the learned Courts below. I have gone through the written statement (available at Page 137 of the LCR) filed by the appellant before the learned trial Court in minute detail. There is no pleading therein to the effect that the signature on the Agreement to Sell was not of the appellant. In fact, even in the present Grounds of Appeal no such plea has been taken by the appellant. Most importantly the defendant during cross-examination has himself admitted his signatures on Agreement to Sell (Ex.P1). As such, the defendant has been unable to dispute the Agreement.

18. Even the contention of the appellant to the effect that the agreement in question was result of fraud and misrepresentation is rejected on account of the findings and observations recorded by the learned 1st Appellate Court in para 8 of the impugned judgment and order dated 04.05.2018 that *“...defendant is drunkard and if the agreement bears the signature of the defendant the same were obtained by fraud. However, I do not agree with the said contention. There is nothing to show that when the agreement was executed the defendant was drunk or not in his senses. Merely by the bald averments of the defendant it is not*



established that his signatures were fraudulently obtained on the said agreement...". In fact, on the said agreement itself the defendant has himself written about the receipt of the earnest money of Rs.9,05,000/-.

19. Further, the agreement in question stood duly proven from the evidence of PW1-Jagmal and PW2-Ali Sher who are the attesting witnesses of the Agreement to Sell. The said witnesses had categorically stated during their cross-examination that the defendant entered into Agreement to Sell (Ex.P1) in favour of plaintiff for sale consideration of Rs.20 lacs and had received an amount of Rs.9,05,000/- as earnest money. It was further deposed by the said witnesses that the date for execution of sale deed was fixed as 08.04.2011 and the defendant signed the Agreement to Sell after understanding and accepting the contents to be correct. PW5-Vikas Gujar Advocate who is scribe of the Agreement to Sell deposed that the same was prepared on the instructions of the parties. As already noticed above the defendant has admitted the receipt of the earnest money; and has himself written about the receipt of the same in the Agreement to Sell. Further the signatures on the agreement to sell regarding taking of earnest money were also proved. In para No. 14 of the judgment of the Ld. Trial Court, it is recorded that the defendant has identified his signatures over the agreement to sell which proves that the said agreement was entered into by him. The Ld. First Appellate court has further recorded that "*The said argument also does not hold any ground as on the agreement itself the defendant has himself written about the*



receipt of the earnest money of Rs.9,05,000/." As such the execution of the Agreement to Sell (Ex.P1), and the readiness and willingness of the plaintiff to perform the said Agreement, is well-established.

20. Before parting it may be pointed out that while issuing notice of motion on 09.05.2019 following order was passed:-

"Learned counsel for the appellant, after arguing at length, submits that the appellant is ready to settle the dispute by paying the earnest money along with interest/damages as settled as the suit land is the only source of income of the appellant.

Notice of motion to this extent only for 21.08.2019.

Till the next date of hearing, parties are directed to maintain status quo regarding possession over the suit land, which shall not be deemed as extended beyond the next date of hearing."

21. Thereafter, till date the matter has been adjourned largely due to non-appearance of the appellant, or on request made on behalf of learned counsel for the appellant on 17.02.2023, 07.10.2023, 19.12.2023, 14.05.2024 and 21.10.2024.

22. In view of the above discussion, the present appeal is **dismissed.**

23. Pending application(s) if any also stand(s) disposed of.

07.02.2025
Sunena

(Nidhi Gupta)
Judge

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