

(2007) 07 P&H CK 0045

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ved Ram

APPELLANT

Vs

Har Kishan

RESPONDENT

Date of Decision: July 27, 2007

Citation: (2007) 4 CivCC 763 : (2008) 149 PLR 159 : (2007) 4 RCR(Civil) 559

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

Present regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit filed by the plaintiff-respondent for specific performance has been ordered to be decreed.

2. The plaintiff-respondent filed a suit for specific performance for enforcement of the contract dated 10.7.1996 vide which the appellant-defendant had agreed to sell the land for consideration amount of Rs. 11,40,725/-. An amount of Rs. 2,00,725/- was paid to the defendant-appeallants as part payment/earnest money. The last date for the execution of the sale-deed was 31.3.1997. It was also agreed that prior to the execution of the sale -deed the appellant-defendant would get income tax clearance certificate. It was claimed that another sum of Rs. 2,15,000/- was paid on 2.1.1997 against a receipt and the defendant also applied for income tax clearance certificate. The plaintiff also claimed that he was always ready and willing and was still willing to perform his part of the contract.

3. The suit was contested by the appellant-defendant where execution of the sale-deed was denied. It was also claimed that the suit was not maintainable as the property was a joint Hindu family property in which sons of the defendant had also interest by birth. It was also claimed that a separate suit has been filed by the sons of the defendant-appellant against the sale of the property.

4. Learned courts below on appreciation of evidence brought on record, recorded a concurrent finding of fact that the plaintiff-respondent and the appellant-defendant had entered into an agreement of sale on 10.7.1996. It was also held that the respondent-plaintiff was always willing and still willing to perform his part of the contract and consequently the suit was decreed.

5. Mr. Khaira, learned senior Counsel appearing on behalf of the appellant challenged the finding of fact recorded by the learned Courts below primarily on the ground that the alleged agreement of sale was not signed by the plaintiff-respondent and further that there was no proof of consideration having been passed and therefore, it was contended that the finding recorded by the learned courts below based on misreading of evidence and therefore, perverse in law.

6. On consideration of the matter I do not find any force in this contention. Learned courts below have recorded a finding that it was not necessary for the plaintiff-respondent to have signed the agreement and therefore, no benefit can be drawn by the appellant-defendant on account of non-signing of the agreement by the purchaser i.e. the plaintiff-respondent. The courts below had rejected this stand by holding that the agreement stood proved because the sons of the appellant-defendant had filed a suit challenging the said agreement of sale. Even otherwise, evidence brought on record proved the execution and passing of consideration through Chiranjit Singh. Evidence was also brought on record to show the willingness on the part of the plaintiff-respondent to perform the part of the contract.

7. Faced with this situation, learned senior Counsel contended that the courts below-were wrong in granting decree for specific performance as the courts were bound to consider the comparative hardship between the parties. In support of this contention learned senior Counsel placed reliance on the judgment of Hon'ble Supreme Court in [V. Muthusami by Lrs. Vs. Angammal and Others,](#) .

8. I have considered this argument and find no force in the contention raised by the learned senior Counsel for the appellant. The authority replied upon by the appellant has no application to the facts of the present case as in the present case there is nothing on record to show any comparative hardship. The stand taken by the defendant-appellant was of denial of agreement of sale. The said stand has been found to be false. It is the settled law that in case of sale of immovable property damages/compensation cannot be treated to be an alternative relief and once there was nothing on record to show the comparative hardship between the parties the judgment relied upon by the appellant can-not be applied to the facts of the present case.

9. Both the courts below have recorded a concurrent finding of fact which is not open to challenge in the present regular second appeal.

No question of law much less substantial question of law arises in this appeal for consideration of this court.

Dismissed.