

(2008) 08 P&H CK 0081

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Darshan Singh

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision: Aug. 4, 2008

Acts Referred:

- Specific Relief Act, 1963 - Section 16

Citation: AIR 2008 P&H 222 : (2009) 1 CivCC 208 : (2008) 152 PLR 404 : (2008) 4 RCR(Civil) 919

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

The defendant is in second appeal. The facts of this case are that Darshan Singh defendant-appellant herein is the owner of land measuring 8 Kanals 5 Marias and plot measuring 10 Marias situated in village Kangniwal and Chandan Singh Tehsil and District Jalandhar which he agreed to sell to the plaintiff by way of an agreement to sell dated 15.6.1982 for a sum of Rs. 52,025/- and had received a sum of Rs. 20,000/- as earnest money. According to the agreement to sell, the sale deed was to be executed till 31.1.1983. Since the plaintiff had lost previous agreement to sell dated 15.6.1982, therefore, by virtue of a subsequent agreement to sell dated 29.1.1983 the date for execution of sale, deed was extended to 10.6.1983 and the defendant had received another sum of Rs. 10,000/- from the plaintiff. Therefore, the sale consideration amount remained to be paid was Rs. 22,025/-. It was further pleaded by me plaintiff that he was and is still ready and willing to perform his part of contract and accordingly made several requests to the defendant. It was pleaded that on 10.6.1983, the plaintiff had gone to the office of Sub Registrar with the remaining sale consideration of Rs. 22,025/- but the defendant did not turn up. The plaintiff has alleged that he has given a notice to the defendant on 10.6.1983 itself

and then on 21.7.1983 and 29.7.1983 to get the sale deed executed but to no avail, therefore, the present suit has been filed on 5.8.1983 for specific performance of the agreements dated 15.6.1982 and 29.1.1983 and in the alternative for decree of recovery of Rs. 50,000/- i.e. Rs. 30,000/- as advance money and Rs. 20,000/- as damages with interest @ 18% per annum.

2. In preliminary objections of the written statement, the defendant had pleaded that suit for specific performance is not maintainable in the present form as the plaintiff is barred by his own act and conduct and that no payment was made to the defendant. On merits, defendant admitted the execution of agreements dated 15.6.1982 and 29.1.1983 but denied the receipt of the consideration. He also pleaded that on 10.6.1983, he had gone to the office of Sub Registrar and waited for the plaintiff till 5 P.M. but he did not turn up and ultimately he engaged Bawa Sardul Singh, Advocate, Jalandhar and had given notice to the plaintiff terminating the agreement to sell. The plaintiff denied the averments of the written statement and reiterated the stand taken in the plaint.

3. On the basis of the pleadings of the parties, the trial Court struck the following issues:

(i) Whether the defendant entered into an agreement to sell the property on 15.6.1982 and 29.1.83? OPP

(ii) Whether the plaintiff has been ready and willing to perform his part of the contract? OPP

(iii) Whether the defendant has breached the terms of the agreement? OPP

(iv) Whether the suit is not maintainable? OPD

(v) Whether the plaintiff is barred by his act and conduct to file this suit? OPP

(vi) Relief.

4. Both the parties led oral as well as documentary evidence. The trial Court, vide its judgment and decree dated 11.2.1985 decreed the suit holding that the defendant had entered into the agreements dated 15.6.1982 and 29.1.1983 which are on record as Ex.P2 and Ex.P3 respectively and had also received a sum of Rs. 30,000/- as earnest money. So far as issue No. 2 regarding readiness and willingness is concerned, the Trial Court had held that though plaintiff and defendant did not go to the office of Sub Registrar on 10.6.1983 yet the plaintiff had always been and is still ready and willing to perform his part of contract. The defendant filed first appeal which was dismissed by the Additional District Judge, Jalandhar vide his judgment and decree dated 2.3.1987 rejecting the only stand taken by the defendant that the suit of the plaintiff could not have been decreed as he has not proved to be ready and willing to perform his part of contract since he did not come present in the office of Sub Registrar on the date fixed.

5. Before this Court, counsel for the defendant-appellant has filed an application for placing on record substantial questions of law but at the time of arguments, only question in respect of findings recorded in para 11 of the judgment of the first Appellate Court was raised where finding of the trial Court has been reversed by the first Appellate Court holding that the plaintiff had appeared in the office of Sub Registrar on 10.6.1983 but the defendant did not turn up and argued that as to whether the First Appellate Court could reverse the findings of the trial Court without any cogent reasons. In the substantial questions of law which have been framed, the appellant had assailed the finding on issue No. 2 with regard to readiness and willingness on the part of the plaintiff to perform his part of contract because finding with regard to the execution of the agreement to sell and payment of the earnest money has been upheld even by the first Appellate Court and has become the finding of fact.

6. Sh. Sarwan Singh, Sr. Advocate appearing for the appellant has vehemently argued that the first Appellate Court has not given any cogent reasons for reversing the findings of the trial court while holding that the plaintiff had appeared before the office of Sub Registrar on 10.6.1983 and the defendant did not turn up. Counsel for the appellant submitted that merely plaintiff had the money in his pocket is not suffice to prove without any corroborative evidence that he had gone to the office of Sub Registrar for the execution of the sale deed. It is further argued that he did not give any application to the Sub Registrar for making his presence and no other witness has been examined to prove that he had accompanied the plaintiff to the office of Sub Registrar. Counsel for the appellant has cited Prem Raj and Anr. v. Smt. Darshana and Ors. (2007) 145 P.L.R. 724, [Ram Awadh \(Dead\) by Lrs. and Others Vs. Achhaibar Dubey and Another](#), and [Amar Singh Vs. Jaswant Kaur](#), .

7. In rebuttal, counsel for the plaintiff-respondent has argued that the plaintiff has produced on record Ex.P1 which is a copy of the account of Sampuran Singh, father of the plaintiff to show that a sum of Rs. 11,150/- was withdrawn from Punjab and Sind Bank on 10.6.1983 and the plaintiff had also obtained a loan of Rs. 11,000/- by executing a pronote Ex.P5/1 in favour of Chain Singh on 7.6.1983, therefore, it is amply clear that he was ready with the remaining sale consideration of Rs. 25,025/- on 10.6.1983 itself. It is further submitted that on the same day, he gave a notice Ex.P6 to the defendant that he had remained present in the office of Sub Registrar till 4 P.M. and thereafter, gave notice Ex.P5 dated 29.7.1983 for getting the sale deed registered. It was also highlighted that the plaintiff had filed the present suit immediately on 5.8.1983. Learned Counsel for the plaintiff-respondent has thus, submitted that preparation of the plaintiff with the balance sale consideration by itself would mean that he was and is still ready & willing to perform his part of the contract coupled with the fact that he had filed the present suit for specific performance immediately after giving a notice to the defendant on the same day. Counsel for the respondent has referred to [Raj Pal Singh Vs. Baldev Singh and Others](#), , Faquir Chand and Anr. v. Sudesh Kumari (2007) 145 P.L.R. 161, Santa Singh

v. Binder Singh and Ors. 2007 (1) R.C.R.(Civil) 162 and [Aniglase Yohannan Vs. Ramlatha and Others,](#) .

8. I have heard both the counsel for the parties and have perused the record.

9. The only question that has been raised by the counsel for the appellant is that the plaintiff has failed to prove that he was ready and willing to perform his part of the contract. The defendant-appellant has highlighted that the plaintiff did not go the office of Sub Registrar on 10.6.1983, therefore, he has committed default and so far as the performance of the agreement is concerned, decree should not be granted in view of decision relied upon by him rendered in the case of Prem Raj (supra). So far as the decision in Prem Raj (supra) is concerned, the Court has held against the plaintiffs on the ground that had they been willing to perform their part of agreement then they would not have sought extension of time and since they had no money, extension of time was sought, therefore, it was found that there was no readiness and willingness. In the case of Ram Awadh (supra), the question was as to whether the plea of readiness and willingness is available to the subsequent purchasers and in the case of Amar Singh (supra), the vendor had gone to the office of Sub Registrar but the vendee did not reach. There is no quarrel with the law laid down in the aforesaid judgments but in the instant case, the facts are different because it is proved on record vide Ex.P1, which is a copy of the account of Sampuran Singh, father of the plaintiff which shows that a sum of Rs. 11,000/- was withdrawn from Punjab & Sind Bank on 10.6.1983 vide Ex.P5/1, the plaintiff had secured a loan of Rs. 11,000/- by executing a pronote in favour of Chain Singh on 7.6.1983, therefore, he was very much prepared with the money for execution of the agreement to sell on 10.6.1983. Further in the present case, both the Courts below have held that the defendant himself had not gone to the office of Sub Registrar on 10.6.1983 and for that purpose, the plaintiff had served a notice (Ex.P6) of the same day and had filed the suit immediately. In the case of Rajpat Singh (supra) cited by the counsel for the appellant, it has been found that if the plaintiff was ready with the money and has filed the suit without any delay then it can not be held that the plaintiff was not ready and willing to perform his part of contract even if his presence before the Sub Registrar is not fully established. In the case of Faquir Chand (supra), the Hon"ble Supreme Court has pleased to hold that u/s 16(c) of Specific Relief Act, 1963 the compliance has to be in spirit & substance and not in letter or form and the conduct of the parties has to be seen. In the case of Santa Singh (supra), this Court has held that the pleadings and statement of the plaintiff on oath that he is ready and willing to perform his part of contract is sufficient to infer that the plaintiff was ready and willing to perform his part of contract. In the present case it is pleaded in para No. 2 of the plaint and while appearing as PW1, the plaintiff had categorically stated that he was ready and willing to perform his part of the contract.

From the facts and circumstances of the present case and especially from the fact that the plaintiff was ready with the money on the date when the sale deed was to be executed and had pleaded as well as stated on oath before the Court that he was ready and willing to perform his part of contract whereas admittedly defendant did not turn up before the Sub Registrar and the plaintiff had served a notice on the same day and had filed the suit without any delay proved the fact that the plaintiff was ready and willing to perform his part of contract.

10. In View of the above discussion, no question of law much less substantial is made out. Therefore, I do not find any merit in the present appeal and the same is, hereby dismissed.