

(2013) 08 P&H CK 0750

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3432 of 1986 (O and M)

Bhajan Singh

APPELLANT

Vs

Naranjan Singh

RESPONDENT

Date of Decision: Aug. 14, 2013

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: G.S. Punia, for the Appellant;

Final Decision: Allowed

Judgement

K. Kannan, J.

The following substantial questions of law arise for consideration in this second appeal:-

- i) Whether the lower appellate Court was justified in finding that the plaintiff had not been ready and willing to perform his part of the contract when there was sufficient evidence of such proof that had been fully considered by the trial Court?
- ii) Whether the reversal of the judgment of the appellate Court not perverse and against the evidence given by parties, as evidence of plaintiff and his witnesses?

The second appeal is against the judgment of the lower appellate Court reversing the judgment of the trial Court that granted a decree for specific performance of an agreement of sale executed by one Naranjan Singh. The execution of the agreement was admitted. On the date of the agreement, an amount of Rs. 3,000/- has been paid as earnest money and the balance was required to be paid before 15.06.1982. The plaintiff contended that he turned up at the Registrar's office at Banga and finding that there was no registering officer went to Nawanshahar which was also a jurisdictional Registrar's office and finding the defendant not there, issued a notice calling upon him to receive the balance and execute the sale deed. The notice was also received by the defendant but he did not give any reply. The plaintiff filed the suit after notice immediately on the opening of the day after vacation, namely, on

16.07.1982. The defence was entered by the legal representatives of the vendor pleading that first defendant's father had been actually waiting at the Registrar's office at Banga and also issued a telegram on the same day. The defendant would contend that the plaintiff had never been ready and willing to perform his part of the contract and, therefore, he was not entitled to discretionary relief of specific performance.

2. The trial Court granted the decree on the basis of evidence adduced by the plaintiff regarding his own attendance at the Sub-Registrar's office and his willingness to perform his part of the contract. The appellate Court reversed the judgment essentially on two aspects: (i) he did not remember the name of the commission agent from whom the plaintiff had collected money for paying the balance of sale consideration; and (ii) he also observed that he had not taken any endorsement of his presence to make a statement about his presence before the office at Banga or Nawanshahar. The suit was decreed only for the refund of the earnest money received by the defendant. I have looked into the evidence of the parties and the documents adduced. If the plaintiff had paid Rs. 3,000/- on the date of the agreement and the parties had provided to themselves 6 months' time for performance, by the payment of the balance of sale consideration, readiness could be tested only with reference to his own statement and witnesses with reference to the financial capabilities of the plaintiff. If there was not an issue regarding the status of the plaintiff to make payment, then his evidence that he did not recall the name of the commission agent from whom he collected the money for payment of balance of sale consideration ought not to assume any significance. If the plaintiff really did not have the money as the court below reasoned, he ought to have also looked for an explanation from the defendant as to why even after receipt of registered notice with acknowledgment duly signed by the defendant. The defendant still did not go to the Registrar's office to execute the sale deed. The assertion of the plaintiff that he was present at the Sub-Registrar's office at Banga and later at Nawanshahar and the contention in defence that the defendant was waiting at Banga do not mean anything in this case, for, admittedly the Registrar's office at Banga could not have registered the document on that day on account of the absence of the Registering Officer. There is a specific reference about the circumstance as to how the document could not be registered at the Sub-Registrar's office at Banga. If the defendant was actually waiting at the office at Banga and had also issued a telegram, it ought not to be taken as concluding the issue, for, the aspect of waiting at Banga itself could not have yielded to any fruitful result of registration on account of the peculiar circumstances detailed in the plaint and explained in evidence that the Registering Officer was not present on that day. The Court must have seen that the absence of reply was itself a proof of the fact that the defendant was not willing to perform his part of the contract. In this case, it must also be noticed that the plaintiff wasted no time that when the date for completion of the sale was 15.06.1982, the suit has been filed on 16.07.1982, the first day after

the opening of the court after summer vacations. I do not think that there has been any laches on the part of the plaintiff to be denied the relief of specific performance. The finding regarding absence of readiness and willingness was absolutely untenable and perverse as entered by the appellate Court. The trial Court's judgment has considered the facts in its proper perspective and it has come to the correct conclusion that the plaintiff had proved his readiness and willingness. I hold the substantial questions of law raised in favour of the plaintiff/appellant, set aside the judgment of the appellate Court and allow the second appeal with costs throughout.