

**(2011) 09 P&H CK 0162**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 3122 of 2011 (O and M)

Darshan Singh

APPELLANT

Vs

Gurmel Singh

RESPONDENT

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**Date of Decision:** Sept. 6, 2011

**Hon'ble Judges:** Ram Chand Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Ram Chand Gupta, J.

Present regular second appeal has been filed against judgment and decree dated 29.4.2011 passed by learned Additional District Judge, Patiala, dismissing appeal filed by present Appellant-plaintiff against judgment and decree dated 5.8.2010 passed by learned Civil Judge, Junior Division, Patiala, vide which suit filed by present Appellant-plaintiff for specific performance of agreement to sell dated 16.11.2006 for the sale of land in dispute was dismissed.

2. I have heard learned Counsel for the Appellant and have gone through the whole record carefully including both the judgments passed by learned Courts below.

3. Briefly stated, admitted facts are that an agreement to sell dated 16.11.2006 for selling the land in dispute for Rs. 1,37,000/-was executed between the parties and Rs. 30,000/-as earnest money was received by Respondent-defendant from the Appellant-plaintiff. Further as per terms and conditions of the agreement Rs. 20,000/-were to be paid on 23.11.2006 and the sale deed was agreed to be executed on 15.12.2006. However, Rs. 20,000/-were not paid on 23.11.2006 by present Appellant-plaintiff as per the agreement and hence, both the Courts came to the conclusion that present Appellant-plaintiff was not ready and willing to perform his part of the contract and hence, suit filed by him for specific performance was dismissed.

4. It has been contended by learned Counsel for the Appellant-plaintiff that Rs. 20,000/-were not paid by Appellant-plaintiff to Respondent-defendant as he never approached him for this purpose.

5. However, it has been rightly observed by learned Courts below that there is nothing in the language used in the document which suggests that the Defendant was to approach the Appellant-plaintiff to seek the aforesaid amount. Moreover, Respondent-defendant has shown that in fact he visited the office of Sub Registrar as well and got his presence marked vide Ex.D1 and, however, Appellant-plaintiff did not visit to make payment of balance sale consideration. It was for the Appellant-plaintiff to prove that he was always ready and still ready to perform his part of the contract. Sufficient reasons have been given by learned Courts below to arrive at the conclusion that the Appellant-plaintiff committed breach of the terms and conditions of the contract.

6. Hence, in view of these facts, it cannot be said that any illegality has been committed by the Courts below in passing the impugned judgments and decrees. Finding recorded by the learned courts below is fully justified by the evidence on record and is supported by cogent reasons. The said finding is not shown to be perverse or illegal nor it is based on misreading or misappreciation of the evidence. Hence, the said finding does RSA No. 3122 of 2011(O&M) -3 not warrant interference in this second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly the appeal is dismissed in limine.