

(2004) 11 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1625 of 1983

Harchand Singh (Deceased) and Others

APPELLANT

Vs

Amar Singh and Others

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Specific Relief Act, 1963 — Section 14(1)

Citation : (2005) 139 PLR 860 : (2005) 2 RCR(Civil) 31

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Respondent-plaintiff Amar Singh filed a suit for specific performance of agreement of sale dated 25.1.1979. Under the said document, appellant Harchand Singh agreed to sell 19 kanals 7 marlas of land at the rate of Rs. 20,000/- per acre. Sale deed was to be executed on or before 20.3.1979. Earnest money of Rs. 10,000/- was paid and the remaining amount was to be paid at the time of execution of sale deed. The plaintiff remained willing to perform his part of the contract and having learnt that the defendant was going to sell the property, he filed a suit for injunction on 5.2.1979 and obtained an injunction. He also served notice on the defendant for execution of the sale deed but the defendant failed to do so. The plaintiff went to the office of Sub-Registrar on 9.3.1979 and also on 19 & 20.3.1979 but the defendant did not turn up.

2. Defendant-Harchand Singh contested the suit, inter alia, on the ground that the plaintiff was not ready and willing to perform his part of the contract and the defendant went to the office of the Sub Registrar on 20.3.1979 but the plaintiff did not turn up.

3. The trial Court decreed the suit. It was held that the plaintiff was ready and willing to perform his part of the contract. It was observed that though, in para 6

of the written statement, the defendant took the plea that the plaintiff failed to appear before the Sub Registrar on 20.3.1979, in his evidence, he stated that the plaintiff came in the office of the Sub Registrar but he did not have sufficient money. In absence of any question to the plaintiff in evidence as to from where the money was to be paid, plea of the defendant could not be accepted. The plaintiff claimed that he went to the office of Sub Registrar on 9.3.1979, 19 and 20.3.1979 and gave a notice to the defendant. The plaintiff also filed suit for injunction against the proposed sale.

4. The learned lower appellate court affirmed the findings of the trial Court. Hence this appeal.

5. Learned counsel for the appellants submitted that finding on readiness and willingness on the part of the plaintiff to perform his part of the contract was perverse. He next submitted that suit for specific performance of the contract was barred u/s 14(I)(c) of the Specific Relief Act, 1963 (for short "the Act").

6. There is no merit in either of the contentions. Both the Courts below have concurrently held that the plaintiff was ready and willing to perform his part of the contract and had the necessary funds but it was the defendant who failed to perform his part of the contract. The plaintiff filed the suit promptly i.e. on 24.3.1979 and the defendant did not express his willingness even before the court.

7. Findings of the Courts below cannot be held to be perverse.

8. As regards the contention that the suit was barred u/s 14(I)(c) of the Act on the ground that the contract was in its nature determinable, no such plea has been raised before the courts below. In any case, present agreement cannot be held to be "determinable" u/s 14(I)(c) of the Act. The said expression referred to such agreements which are determinable at the instance of the defendant or at the instance of either party. If it is held to refer to agreements which are determinable by agreement on both sides, the provisions will carry no meaning, as almost all agreements are determinable by consent of both the parties.

9. Learned counsel for the appellants has referred to certain decisions but the same are distinguishable, as under the terms of the agreements involved in the said decisions, the same were terminable by the defendant. In *Jamahir Sao and Another Vs. Satrughna Sonar and Another*, there was a recoverable contract of sale with a option to the defendant to get a re-conveyance of the property at any time within three years of repayment on consideration. In *S.K. Gupta Vs. Hyderabad Allywn Ltd.*, contract of agency was terminable at the instance of the defendant without any notice. In *Oil and Natural Gas Corporation Ltd., Mumbai Vs. Streamline Shipping Co. Pvt. Ltd.*, , *Airport Authority of India Vs. Dilbagh Singh*, also, contracts were terminable at the instance of the defendants. In the present case, it is not the case of the appellants that the agreement was terminable at the instance of defendant-appellant Harchand Singh.

Accordingly there is no merit in this appeal and the same is dismissed.