
(1988) 07 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 269 of 1978

Thakar Singh and others

APPELLANT

Vs

Inder Singh and others

RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:

Specific Relief Act, 1963 — Section 16(c)

Citation : (1988) 07 P&H CK 0021

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : H.L. Sarin and Mr. A.S. Grewal, for the Appellant; Ashok Bhan and Mr. Rakesh Garg, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The impugned judgment and decree of the lower appellate court warrants no interference in appeal.

2. The matter here arises from the suit for specific performance. On April 8, 1971, the vendor-Inder Singh, entered into an agreement to sell 7 kanals and 11 marlas of land to the Plaintiffs-Inder Singh, Chand Singh and Kashmir Singh sons of Mellagar Singh for a sum of Rs. 12,000/- Rs. 5,000/- was paid to the vendor at the time of execution of this agreement. The agreement provided that the sale would be registered by June 24, 1971. A few days later, however, on April 16, 1971, the vendor-Inder Singh sold the same land to Thakar Singh and Surat Singh for Rs. 14,000/-. This is what led to the filing of the present suit for specific performance which was eventually decreed in favour of the Plaintiffs on August 19, 1976.

3. Two months time was granted to the Plaintiffs by the decree of the trial court for depositing the balance of the sale price. This amount was not deposited within the stipulated period.

Both the Plaintiffs and the Defendant consequently went up in appeal against the

judgment and decree of The trial court, while the Defendants sought to assail the decree for specific performance granted against them, the Plaintiffs prayed for extension of time for deposit of the balance of the sale price.

On October 31, 1977. the lower appellate court, dismissed the Defendants "appeal up-holding thereby the decree for specific performance granted to the Plaintiffs and at the same time allowed two months" time from the date of its judgment, that is, October 31, 1977 to the Plaintiffs to deposit the balance of the sale consideration. This amount has admittedly been deposited within the time granted.

4. Counsel for the Appellants sought to assail the decree of the lower appellate court on the ground that the Plaintiffs had failed to aver the essential ingredients of Section 16(c) of the Specific Relief Act 1963, namely; that the plaintiffs were ready and willing to perform their part of the contract for sale. This is indeed a contention devoid of merit as a specific pleading to this effect is there in the replication. It is now well-settled that replication to is a part of the pleadings The omission of such a plea, in the plaint, cannot, therefore, adversely affect the claim of the Plaintiffs

5. The next challenge to the decree was on the ground that the Plaintiffs had not deposited the balance of the sale consideration within the time granted to them by the trial court. Pointed reference was made to the order of the trial court to the effect that if the balance amount is not paid within the said two months the suit shall be deemed to have been dismissed. There is clearly no warrant for accepting this objection either as the appellate court admittedly has the power to extend time for deposit of the sale consideration and the appeal, is, but a continuation of the suit and Counsel for the Appellant could not point to any flaw in the exercise by, the lower court, of its discretion in extending time for the deposit of the sale consideration.

6. Finally, a half-hearted attempt was made to raise an objection regarding the court-fee affixed on the appeal filed by the Plaintiffs seeking extension of time for the deposit of the sale consideration. The argument being that ad valorem court-fee was payable thereon This is again a contention that cannot stand scrutiny as the court-fee payable was clearly as per Schedule-II of Article 17(4) of the Court-Fee Act, 1980.

7. There is thus no merit in this appeal and it is accordingly hereby dismissed with costs.