

[2014 PLRonline 0207](#)

Mandhir Singh v. Gurjant Singh , 2014 PLRonline 0207

Punjab & Haryana High Court

Rakesh Kumar Garg, J.

Mandhir Singh v. Gurjant Singh

RSA No. 1936 of 2014 (O&M)

Suit for specific performance – Nothing on record to prove that time was the essence of the contract – Conduct of the appellants shows their real intentions, as immediately after the stipulated date i.e 30.4.2009, they issued notice on 1.5.2009 (dated 30.4.2009), terminating the agreement to sell in question without giving an opportunity to him to perform his part of the contract by extending time and without finding the reasons of not appearing before the Sub Registrar – Both the Courts below on appreciation of evidence on record have recorded a concurrent finding that the suit property fell within the area of Tehsil Bhagta Bhaika and in normal course, the sale deed was to be registered in the office of Sub Registrar Bhagta and 30.4.2009 was a non-working day for the purpose of registration of the sale deed at Sub Tehsil Bhagta Bhaika. It is further not in dispute that there were holidays from 1.5.2009 to 3.5.2009, whereas on 4.5.2009, the Sub Registrar, Bhagta Bhaika was on election duty and lastly, on 6.5.2009, the plaintiff-respondent was present at Tehsil Complex, Bhagta Bhaika for getting the sale deed registered from the respondents. It is the specific case of the appellants that they were present on the stipulated date for marking their presence at Rampura Phul. The question is when the Sub Registrar Bhagta Bhaika was having the jurisdiction, then why the appellants did not go to Sub Registrar Bhagta Bhaika for registration of the sale deed and remained present on 30.4.2009 at Rampura Phul Tehsil. Even if it is assumed that on 30.4.2009 sale in respect of the land situated within the jurisdiction of Sub Registrar Bhagta Bhaika could have been registered at the office of Sub Registrar, Rampura Phul, will not ipso facto prove that the plaintiff-respondent was not ready and willing to perform his part of the contract on the stipulated date i.e 30.4.2009, as it is not the case of the appellants that they had informed the plaintiff-respondent to be present in the office of Sub Registrar, Rampura Phul on 30.4.2009 or that this fact was to the notice of the plaintiff-respondent. In fact, the facts on record show the mala fide conduct of the appellants that they were in tearing hurry to get rid of the agreement to sell in question, as even after filing of the suit, they have never taken a stand that they were still ready and willing to execute and register the sale deed in favour of the plaintiff-respondent, though the suit was filed immediately on 23.5.2009

Mr. M.S Bedi, Advocate for the appellants. Mr. MJS Bedi, Advocate for respondent no. 1.caveator.

RAKESH KUMAR GARG, J.

As per the averments made in the suit, the appellant-defendants and proforma respondent entered into an agreement with the plaintiff-respondent on 31.7.2008 for sale of suit land measuring 42 kanals 10 marlas at the rate of Rs. 7,70,000/- per acre and received Rs. 10 lacs as earnest money and executed the agreement to sell in question in the presence of witnesses. It was further agreed that the appellants shall get the sale deed executed and registered in favour of the plaintiff-respondent on payment of balance sale consideration upto 30.4.2009

The plaintiff-respondent filed the instant suit alleging that the appellants and proforma respondent have failed to execute the sale deed in his favour as per the terms and conditions of the agreement in question.

In their defence, the appellants and proforma respondent admitted execution of the agreement in question and receipt of earnest money. However, it was their case that the plaintiff-respondent violated the terms and conditions of the agreement, as he failed to make payments on 30.4.2009 before the Sub Registrar, Bhagta Bhaika at Rampura Phul and thus, they terminated the agreement in question vide legal notice dated 1.5.2009 served through registered AD post and therefore, the suit was liable to be dismissed.

After framing of the issues and recording evidence on behalf of the parties, the trial Court decreed the suit for specific performance of agreement in question vide judgment and decree dated 8.9.2012 and decided all the issues in favour of the plaintiff-respondent, recording a finding that the plaintiff-respondent was always ready and willing to perform his part of the agreement and in fact, the appellants have failed to appear before the Sub Registrar concerned for execution and registration of the sale deed in favour of the plaintiff-respondent and they cannot take the benefit of their own wrong. They were duty bound to go to the office of the Sub Registrar, Bhagta Bhaika on the stipulated date but instead, they went to Rampura Phul Tehsil so as to defeat the rights of the plaintiff-respondent and the notice dated 1.5.2009 on the part of the appellants to cancel the agreement shows their real intention to the effect that they themselves were not willing to get the sale deed registered in favour of the plaintiff-respondent.

The first appeal filed on behalf of the defendant-appellants against the aforesaid judgment and decree of the trial Court was also dismissed by the lower Appellate Court vide impugned judgment and decree dated 11.2.2014 holding that there was no illegality in the findings of the trial Court on all the issues. The relevant observations of the lower Appellate Court read thus:-

“20. As mentioned above, the case of the plaintiff is based on agreement executed by defendants on 31.7.2008 The execution of agreement is not disputed. The receipt of earnest money is not disputed. Terms and conditions incorporated in the agreement are not disputed. From the stand of the defendants/appellants, it emerges that the controversy is whether the plaintiff was ready and willing to perform his part of the agreement. This is to be determined on the basis of pleadings of the parties coupled with act and conduct of the

plaintiff. The sale deed was to be executed up to 30.4.2009 There is nothing on record to show that defendant was ready to execute the sale deed upto 30.4.2009 The plaintiff has pleaded and proved that he visited the office of Sub Registrar Bhagta Bhaika on 4.5.2009 as it was Holidays on 1.5.2009 to 3.5.2009 It is also not disputed that the suit property falls within the area of Sub Tehsil Bhagta Bhaika and in normal course, the sale deed was to be registered in the office of Sub Registrar Bhata Bhaika. The defendants have brought on record their affidavit Ex.D1 to prove that they were ready and willing to perform their part of the agreement on 30.4.2009 and they remained present for executing the registered deed. This affidavit is dated 30.4.2009 In agreement Ex.P2 it is not specifically mentioned that the sale deed is to be executed on 30.4.2009 The sale deed was to be executed upto 30.4.2009 There is also nothing to show that the defendants got issued any notice to the plaintiff calling upon him to get the sale deed executed as per terms and conditions. The defendants have also produced on record notice Ex.D2 This notice is scribed on 30.4.2009 and it is mentioned that the plaintiff has violated the conditions, as such his earnest money is treated is forfeited and the agreement stand cancelled. But before treating the agreement cancelled and forfeiting the earnest money, the defendants have not issued any notice to the plaintiff calling upon him to get the sale deed executed. The plaintiff has proved on record his affidavit Ex.P3 and Ex.P4 to prove that he remained present and ready and willing to get the sale deed executed on 4.5.2009 and 6.5.2009 In these circumstances the readiness and willingness of the plaintiff before the filing of the suit stand proved. Plaintiff has also deposed that he is still ready and willing to perform part of his agreement.

21. There is another aspect of the matter also. As per agreed terms and conditions, the time was not essence of the agreement. It is well settled in the case of agreement for sale of immovable property, the presumption is that time is not essence of the agreement unless so specifically mentioned. In these circumstances, the defendants were not justified to treat the agreement cancelled on 30.4.2009 itself. Moreover, the plaintiff has filed suit on 22.5.2009 i.e without any unreasonable delay.

22. The net conclusion of my above discussion is that there is no illegality in the findings recorded by the learned trial court on all the issues and the findings of learned trial court stand affirmed. Resultantly, the appeal of the appellants/defendants fails and the same stand dismissed with costs."

Still not satisfied, the defendants have filed the instant appeal submitting that following substantial questions of law arise in this appeal for consideration of this Court:-

- (i) Whether when the plaintiff-respondent failed to appear before the Joint Sub Registrar on 30.04.2009 for execution of the sale deed, he is entitled to get the decree of specific performance in view of the perverse findings of the courts below that he was ready and willing to get the sale deed executed?
- (ii) Whether the lower Appellate Court is competent to decide the appeal without first deciding the stay application pending before it?
- (iii) Whether the perverse findings of the Courts below are sustainable when the plaintiff

has failed to plead and prove his readiness and willingness to perform his obligations in terms of the contract?

In support of his case, learned counsel for the appellants has vehemently argued that both the Courts below have misread the evidence on record, resulting into perversity in the findings, as from the evidence on record, the factum of readiness and willingness of the plaintiff-respondent is not proved, as he has failed to appear before the Sub Registrar, Bhagta Bhaika at Rampura Phul on the stipulated date i.e 30.4.2009 with the balance sale consideration and thus, the appellants were perfectly right in cancelling the agreement to sell in question vide notice dated 1.5.2009

According to learned counsel for the appellants, the Courts below have failed to correctly evaluate the evidence on record and returned the findings illegally, which are perverse and not sustainable in the eyes of law and the entire approach of the Courts below is against the law and facts of the case and in view of the fact that the plaintiff-respondent has failed to perform his part of the agreement, by not presenting himself before the Sub Registrar concerned on the stipulated date, the relief of specific performance could not have been granted in his favour. Thus, the substantial questions of law, as raised, do arise in this appeal and the impugned judgments and decrees of the Courts below are liable to be set aside.

In support of his case, learned counsel for the appellants has also relied upon a judgment of Hon'ble the Supreme Court in the case of I.S Sikandar (D) by LRs v. K. Subramani 2014 (1) RCR (Civil) 236 to contend that in absence of any challenge to the termination of the agreement to sell in question, vide notice dated 1.5.2009 issued by the appellants, seeking declaratory relief to declare the termination of agreement as bad in law, the suit filed by the plaintiff-respondent for specific performance of the agreement to sell in question, was not maintainable. It is his further submission that by virtue of Legal Notice dated 1.5.2009, the agreement to sell in question stood terminated and thereafter, the relief sought on the basis of nonexisting of agreement to sell, was wholly unsustainable in law, in absence of any challenge to such termination of agreement to sell.

At the outset, it may be noticed that the argument raised on behalf of the appellants on the basis of the judgment of Hon'ble the Supreme Court in the case of I.S Sikandar (D) by LRs (supra) is wholly misconceived. The aforesaid judgment is not applicable in the facts and circumstances of the instant case at all. In the aforesaid judgment, after expiry of the stipulated date, the vendors had waited patiently and had extended time for registration of the sale deed in respect of the suit property and the plaintiff was called upon by them to get the sale deed executed in his favour by paying the balance sale consideration, but he had avoided the same on one pretext or the other, leading to the conclusion that he was not ready and willing to perform his part of the contract and therefore, they rescinded the contract and executed the sale deed in favour of the subsequent vendee, holding that time was the essence of the contract, as the vendors were in dire necessity of money, due to the death of husband of the first defendant who was the bread-winner and therefore, had agreed to sell the suit property in favour of the plaintiff, whereas in the instant case, the facts are entirely different.

There is nothing on record to prove that time was the essence of the contract in the case in hand. Not only this, the conduct of the appellants shows their real intentions, as immediately after the stipulated date i.e 30.4.2009, they issued notice on 1.5.2009 (dated 30.4.2009), terminating the agreement to sell in question without giving an opportunity to him to perform his part of the contract by extending time and without finding the reasons of not appearing before the Sub Registrar Bhagta Bhaika at Rampura Phul on 30.4.2009, as alleged by them. Moreover, both the Courts below on appreciation of evidence on record have recorded a concurrent finding that the suit property fell within the area of Tehsil Bhagta Bhaika and in normal course, the sale deed was to be registered in the office of Sub Registrar Bhagta and 30.4.2009 was a non-working day for the purpose of registration of the sale deed at Sub Tehsil Bhagta Bhaika. It is further not in dispute that there were holidays from 1.5.2009 to 3.5.2009, whereas on 4.5.2009, the Sub Registrar, Bhagta Bhaika was on election duty and lastly, on 6.5.2009, the plaintiff-respondent was present at Tehsil Complex, Bhagta Bhaika for getting the sale deed registered from the respondents. It is the specific case of the appellants that they were present on the stipulated date for marking their presence at Rampura Phul. The question is when the Sub Registrar Bhagta Bhaika was having the jurisdiction, then why the appellants did not go to Sub Registrar Bhagta Bhaika for registration of the sale deed and remained present on 30.4.2009 at Rampura Phul Tehsil. Even if it is assumed that on 30.4.2009 sale in respect of the land situated within the jurisdiction of Sub Registrar Bhagta Bhaika could have been registered at the office of Sub Registrar, Rampura Phul, will not ipso facto prove that the plaintiff-respondent was not ready and willing to perform his part of the contract on the stipulated date i.e 30.4.2009, as it is not the case of the appellants that they had informed the plaintiff-respondent to be present in the office of Sub Registrar, Rampura Phul on 30.4.2009 or that this fact was to the notice of the plaintiff-respondent. In fact, the facts on record show the mala fide conduct of the appellants that they were in tearing hurry to get rid of the agreement to sell in question, as even after filing of the suit, they have never taken a stand that they were still ready and willing to execute and register the sale deed in favour of the plaintiff-respondent, though the suit was filed immediately on 23.5.2009

In view thereof, it cannot be said that there is any perversity in the findings recorded by the Courts below.

No other argument was raised.

Thus, no substantial question of law arises in this appeal.

Dismissed.