

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 3741 of 2013 (O&M)

Date of decision: 24.09.2015

Kartar Singh

...APPELLANT

VS.

Karam Chand and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Raman Goklaney, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Fazilka dated 14.10.2010, vide which the suit for specific performance of the agreement dated 04.05.2006 for sale of land measuring 13 Kanal 8 Marlas i.e. 1/4th share of the total land measuring 53 Kanal 12 Marlas, details of which have been given in the heading of the suit situated in revenue estate of Village Ganjuana, Hadbast No. 296, Tehsil Fazilka, District Ferozepur, for a consideration of ₹ 3,00,000/- per acre, has been decreed, which has been upheld by the Additional District Judge, Ferozepur on 26.04.2013 dismissing the appeal of the appellant-defendant No. 1.

It is the contention of the learned counsel for the appellant that the Courts below have not correctly appreciated the evidence, which has been led by the parties, nor have they applied their mind to the provisions of

the Statute, which mandates that the respondent-plaintiff should prove the execution of the agreement to sell and further his readiness and willingness to perform his part of contract, which is pre-requisite for entertaining and granting a decree for specific performance, as has been prayed for. His contention is that the agreement to sell does not refer to the factum of the land having been mortgaged with respondent No. 2, which was dated 06.06.2003, which is much prior to the date of agreement to sell dated 04.05.2006. Since the property was mortgaged, there was no question of the same being a subject matter of agreement to sell. He contends that the agreement to sell is a forged and fabricated document and, therefore, the same could not have been relied upon for granting the decree in favour of the respondents-plaintiffs. In support of his contentions, he has placed reliance upon the statements given by the respondents-plaintiffs and the evidence led by them, wherein they have not been able to prove the fact that the property was a mortgaged property and there was no mention thereof in the agreement to sell. As regards the readiness and willingness on the part of the respondents-plaintiffs is concerned, he contends that the respondents-plaintiffs have not appeared before the Sub-Registrar on the date fixed for execution of the sale deed i.e. 12.12.2006 and in the absence of his presence, it can be contended that the respondents-plaintiffs were not ready and willing to perform their part of contract. He thus, contends that the findings recorded by the Courts below, on this issue, cannot be sustained and therefore, the judgments and decree passed by the Courts below deserve to be set aside.

I have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the impugned

judgments and decree passed by the Courts below.

A perusal of the same would show that the respondents-plaintiffs had not only appeared themselves as witnesses but have also examined PW1-Harbans Lal, attesting witness of the agreement to sell, PW2 Ram Baksh Grover, Scribe of the agreement and PW4 Smt. Naveen Jasuja, Advocate and Notary Public, who had attested the agreement to sell. All these witnesses prove beyond doubt the execution of the agreement to sell dated 04.05.2006.

The contention of the counsel for the appellant that the agreement to sell was a forged and fabricated document cannot be accepted in the light of the fact that the onus, once the agreement to sell has been proved that it has been executed, shifts on to the appellant-defendant, which he has failed to discharge as except for his bald statement, there is no evidence brought on record to substantiate such assertions. No expert witness has been examined showing that the thumb impression and the signatures on the agreement to sell were not theirs or that they did not pertain to them. Thus, it cannot be said that the said agreement to sell is not a genuine document.

The next contention, which has been raised by the counsel for the appellant, is with regard to the readiness and willingness on the part of the respondents-plaintiffs to execute the sale deed on the date fixed i.e. 12.12.2006. This argument again cannot be accepted merely on his contention that the respondents-plaintiffs did not appear before the Sub-Registrar for execution of the agreement and did not produce any proof thereof with regard to they having appeared before the Sub-Registrar. This is neither the mandate of the Statute nor the requirement of any law to prove

the readiness and willingness of a person, he must have a proof with regard to he having gone to the office of the Sub-Registrar for execution of the sale deed. What is required is his assertion to that effect and reasonable subsequent steps taken which would indicate that he was always ready and willing to perform his part of contract.

In the present case, the suit has been filed on 19.12.2006, which is after a period of 6-7 days from the date fixed for execution of the sale deed. The prompt steps taken by the respondents-plaintiffs for giving effect to the agreement to sell by way of filing the suit for specific performance clearly indicate the readiness and willingness on the part of the respondents-plaintiffs for complying with their part of the agreement to sell. On the other hand, the appellant-defendant has not been able to produce anything to the contrary either by producing any evidence or any witness in support of his contention with regard to the readiness and willingness on the part of the respondents-plaintiffs.

The findings recorded by the Courts below being in accordance with and in consonance with the evidence led by the parties on due appreciation, which is in accordance with law, do not call for any interference especially when there are concurrent findings recorded by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

September 24, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE