

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 2336 of 2015 (O&M)

Date of decision: 12.08.2015

Jagjit Singh

...APPELLANT

VS.

Gurdeep Singh

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. C.M.Munjal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been filed challenging the judgment and decree passed by the Courts below vide which the suit for actual possession by way of specific performance and for permanent injunction stands decreed.

Briefly, the facts are that the respondent-plaintiff entered into an agreement with the appellant-defendant for sale of plot measuring 143.7 Sq. Yards on 09.12.2010 in the total sale consideration of ₹ 21,55,500/-. As the appellant-defendant had received the entire sale consideration of ₹ 21,55,500/- from the respondent-plaintiff in the presence of the witnesses, possession of the said plot was delivered on 09.12.2010, the date on which the agreement to sell was executed. The date fixed for registration of the regular sale deed was 20.02.2011, which being Sunday, the date was changed to 21.02.2011. On 21.02.2011, the parties to the agreement, by mutual consent, extended the date of execution of the registration of the sale

deed as 07.03.2011 in the presence of the witnesses as the appellant-defendant had shown his inability for the same. A special note/endorsement/writing regarding extension of date at the back of agreement was made and beneath this endorsement, the appellant signed in the presence of witnesses and the respondent-plaintiff and they also put their signatures. On 07.03.2011 when the respondent-plaintiff reached the office of the Sub-Registrar, Bathinda along with the expenses, which were likely to be incurred for execution of the sale deed, the appellant-defendant did not turn up despite being informed. The respondent-plaintiff appeared before the Sub-Registrar, Bathinda with his duly sworn affidavit on 07.03.2011 who attested the same in the capacity of the Executive Magistrate at Serial No. 160 dated 07.03.2011. The appellant failed to execute the sale deed despite request. Hence the suit was filed when all the efforts to execute the sale deed failed.

The stand of the appellant-defendant was that he had never agreed to sell the alleged plot to the respondent-plaintiff nor he received the earnest money and the agreement to sell was a forged and fabricated document.

On the basis of the evidence led by the parties, both the Courts below came to a conclusion that the agreement to sell dated 09.12.2010 was duly executed by the appellant-defendant and there was no substance in the stand of the appellant-defendant. The suit was decreed by the Additional Civil Judge (Senior Division), Bathinda on 29.11.2013. The appeal preferred by the appellant-defendant before the First Appellate Court stands dismissed on 23.04.2015.

It is the contention of the counsel for the appellant that the

stamp papers were purchased on 20.10.2010 from one stamp vendor Tej Bhan at Nathana, whereas the agreement to sell has been executed on 09.12.2010 at Bathinda. There is no explanation as to the delay in execution of the agreement. It has further not been proved by the respondent-plaintiff as to the source of the sale consideration of ₹ 21,55,500/-. He further contends that the agreement to sell was not subscribed by a regular deed writer but by an Advocate and, therefore, it creates a doubt with regard to the execution of the agreement to sell. He, on this basis, contends that the Courts having failed to appreciate the evidence in the proper perspective and rather have misled themselves in returning the findings, which call for interference by this Court in setting aside of the judgments and decrees under challenge.

This contention of the counsel for the appellant cannot be accepted in the light of the fact that the respondent-plaintiff has produced the evidence especially the Advocate, the attesting witnesses and the statement of the respondent-plaintiff himself. The appellant-defendant has not been able to prove that the agreement to sell had not been executed by him by producing any evidence.

It has come on record that the respondent-plaintiff retired as a Chief Pharmacist, Health Department in July, 2009 and was also owner of land measuring 51 Kanals 12 Marlas, apart from the plot, agreement whereof was entered into and he used to give land on lease during his service tenure. The crop, which was harvested from the land of the plaintiff-respondent, was sold to the Commission Agent, from whom he had taken the money. Merely because the summons, which have been issued to Darshan Kumar, Commission Agent, Dana Mandi, Muktsar on Shop No.

129, have been returned with the report that in Shop No. 129, Luxmi Sale Corporation was working and the firm started in the year 2011 would not conclusively prove that the Commission Agent Darshan Kumar was not working at Muktsar Dana Mandi in Shop No. 129 as the respondent-plaintiff had stated that he had been selling his crop to the Commission Agent for 2-3 years prior to the execution of the agreement to sell.

The contention of the counsel for the appellant with regard to the delay in execution of the agreement and the date fixed for execution of the sale deed in itself cannot be a ground for not accepting or doubting the execution of the sale deed. An explanation to that effect has also been furnished in the evidence of PW-1 Jagsir Singh, who has stated that on the date of execution of the agreement to sell, the sale deed could not be registered as the appellant-plaintiff had told that the loan amount was outstanding. Even at the time of the mutual agreement dated 21.02.2011 while extending the date of registration of the sale deed, the appellant-defendant had informed that the loan amount has not been got cleared and he further disclosed that the original sale deed was lying with some financier at Tapa. This explanation has been found to be reasonable and quite justified with regard to the delay in execution of the sale deed.

There is no substantial question of law, which requires interference of this Court in this appeal.

There being no merit in the present appeal, the same stands dismissed.

August 12, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE