

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 1915 of 2014 (O&M)

Date of decision : 17.7.2015

Amarjit Singh

... Appellant

versus

Balbir Singh and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vaibhav Narang, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff has filed the present appeal impugning the judgment and decree of the learned Lower Appellate Court whereby that of the trial Court was set aside and the suit filed by the appellant-plaintiff for injunction was dismissed.

The brief facts of the case are that the appellant filed a suit for permanent injunction claiming that the respondents-defendants agreed to sell 24 kanals of land to the appellant on 8.4.1991 for ₹ 34,000/- per acre. Earnest money of ₹ 25,000/- was paid. The last date for execution of sale-deed was 15.5.1992, which was extended to 29.11.1992, on payment of additional sum of ₹ 22,500/-. Thereafter, the appellant came to know that there was some litigation pending regarding the suit land in this Court in RSA No. 2460 of 1992. When pointed out that to the respondents, the date for execution of sale-deed was further extended on 23.11.1992 upto two months after the decision of RSA No. 2460 of 1992. The aforesaid appeal is still pending in this Court. The suit was filed as the respondents were trying to alienate the land and creating third party rights. The defendants while admitting the agreement to sell stated that factum of pendency of appeal before this Court was disclosed to the appellant and there being no bar on sale of property by them, the agreement to sell was executed. It was further submitted that the appellant having failed to get the sale-deed executed, the

time for execution of sale-deed was further extended on the request of the appellant from 15.5.1992 to 29.11.1992. However, there was no further extension. The appellant having failed to get the sale-deed executed, has no right to file the suit in question in the year 2007. The trial Court decreed the suit finding that the extension of time on 23.11.1992 was duly proved, however, the learned Lower Appellate Court found that the findings of the trial Court being erroneous as the appellant had failed to lead any evidence to prove extension of time for registration of sale-deed, he was not entitled to any relief.

The core issue hinges on the fact whether there was extension of time by the vendor on 23.11.1992. This is the only fact on which the case of the appellant is based. The learned Lower Appellate Court found that initially onus to prove that there was extension of time on 23.11.1992 was on the plaintiff. Only a photocopy thereof was produced on record as Ex.P3. No witness to the aforesaid writing for extension of time was produced by the appellant, rather the plaintiff in his cross-examination stated that there was no person when the aforesaid extension of time was reduced in writing as it was got done by his father. Exhibit P3 also suggested that father of the appellant, Kapoor Singh, had thumb marked the writing on his behalf. Meaning thereby the appellant was not even present when the time for registration of sale-deed was allegedly extended. Neither the father of the appellant, who thumb marked on his behalf nor two witnesses, who had signed the same, were produced. Though it was claimed that father of the appellant had expired, but no material was produced on record in support thereof. Even if the other two witnesses had also expired, as claimed by the appellant, but still no effort was made to prove their signatures/ thumb impressions by leading any other evidence. The learned Lower Appellate Court had wrongly placed onus to prove the extension of time on the defendants. The initial onus thereof was on the plaintiff only as his case was based on that. The onus could shift on the defendants only after the initial burden was discharged. It has further come on record that vide Ex. PW.3/A, sale-deed dated 20.5.2005 was executed by Angrej Singh pertaining to part of the suit property in favour of the appellant and his brothers. The same was also subject matter of appeal pending in this Court. Meaning thereby

the appellant had the knowledge about the pending litigation and there was no bar for sale of property during pendency of appeal, hence, could not be said to be a ground for extension of time for registration of sale-deed.

The findings recorded by the learned Lower Appellate Court cannot be said to be perverse. No substantial question of law arises. The appeal is accordingly dismissed.

17.7.2015
vs

(Rajesh Bindal)
Judge