

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

RSA No. 2733 of 2014 (O&M)

Date of decision : 29.7.2015

Kirpal Singh and others

... Appellants

versus

Raj Kumar and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Arun Kaundal and
Mr. Puneet Gupta, Advocates, for the appellants.

Rajesh Bindal, J.

This order will dispose of two appeals bearing RSA Nos. 2733 and 2939 of 2014, as common questions of law and facts are involved therein.

Brief background of the litigation as submitted by learned counsel for the appellants is that Kashmir Kaur- respondent no.3, entered into an agreement to sell the suit land in favour of the appellants on 3.7.1992 @ ₹ 1,66,000/- per acre (comprising 6 bighas 5 biswas) and received a sum of ₹ 1,50,000/- as earnest money from them on that day. As per the agreement to sell, sale-deed qua half of the land was to be executed on 2.9.1993, whereas for the balance half, the sale-deed was to be executed upto *Magh Sammat* 2049 i.e. 17.1.1993. Before the date fixed for execution of sale-deed, Kashmir Kaur got two sale-deed registered in favour of Raj Kumar on 8.9.1992 for part of the property. The appellants filed a suit for permanent injunction in which interim stay was granted and thereafter Kashmir Kaur did not execute any sale-deed. The same was withdrawn with permission to file a suit for possession by way of specific performance of agreement to sell. The same was filed on 8.2.1993. Prior to that Raj Kumar and others filed a suit for permanent injunction restraining Kashmir Kaur from executing any sale-deed in favour of the appellants. They had claimed

specific performance of agreement to sell dated 18.3.1992 executed by Kashmir Kaur in their favour. Both the suits were clubbed and the evidence led. The suit for possession by way of specific performance of agreement to sell filed by the appellants was dismissed by both the Courts below, whereas the suit for permanent injunction filed by Raj Kumar and others was decreed. The aforesaid judgments and decrees have been impugned by the appellants in the present appeals.

One of the important issue on which the appellants had been non-suited is that they had not been able to prove due execution of agreement to sell. The same has been produced on record as Ex. D16. From a perusal thereof, it is evident that there is overwriting/ cuttings in the agreement to sell. At the place where date 2.9.1993 has been mentioned, there is overwriting and thereafter the second date 15 *Magh Sammat* 2049 has been mentioned, which is equivalent to 17.1.1993 as per English Calendar. The execution of first sale-deed for half share of land, as per the agreement to sell, is on a date than the date on which the sale-deed for the balance half was to be executed. Further the reason as to why in the same agreement to sell, which was executed on a date mentioned as 3.7.1992 as per English Calendar, for execution of two sale-deeds, for half share each, different dates with reference to Calendars have been mentioned i.e. English Calendar and Vikram Samvat. These could not be explained satisfactorily and certainly creates doubt on the genuineness of the agreement to sell.

The contention raised by learned counsel for the appellants to explain the overwriting in the agreement to sell, while referring to the statement of deed-writer, cannot be accepted as he had not referred to any statement made by the vendor that the aforesaid cuttings were before the agreement to sell was signed, rather they had denied the execution thereof. Merely on the basis of a statement of the deed-writer, the findings recorded by the learned Court below opining that there is no agreement to sell between the parties cannot be said to be perverse.

Once the agreement to sell itself is not proved by the appellants, the case set up by them falls flat as no possession or specific performance of the agreement to sell can be sought.

No substantial question of law arises. Both the appeals are accordingly dismissed. Consequently, the accompanying applications are also dismissed.

29.7.2015
vs

(Rajesh Bindal)
Judge