

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

Regular Second Appeal No.624 of 2015 (O&M)
Date of decision: 17.08.2015

Balkishan

... Appellant

versus

Jatin son of Shri Phool Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mansur Ali, Advocate,
for the appellant.

K.Kannan, J. (Oral)

1. The appeal is by the defendant against whom a decree for specific performance has been granted by the trial Court as affirmed in the appellate court. The agreement was purported to be for execution of sale of an agricultural land in an extent of 7/36 share of the defendant. According to the terms of the document, the sale deed was required to be executed on or before 01.07.2006 but since 01.07.2006 and 02.07.2006 happened to be Saturday and Sunday and hence holidays, the plaintiff would state that he was present on 03.07.2006, had his presence noted in an affidavit prepared before the Registering Officer. The plaintiff would contend that the defendant was not present and consequently, issued a notice, calling upon the defendant to execute the sale and on his failure, the suit has been filed.

2. The contest was that the sale of agricultural land would have required NOC from the government and the plaintiff had not done any action for obtaining such a NOC only because he was not ready to take the sale deed. The counsel would state the presence of the plaintiff before the Sub Registrar is exceedingly doubtful for the document presented in court, namely, the affidavit by the plaintiff himself with attestation from the Sub-Registrar was only in the second page and the first page carried no endorsement by the Registrar. The plaintiff was bound to have produced some person from the Registrar's office to vouch for his presence and prove the endorsement. The same was not done. There was a further contention that the plaintiff placed no evidence that he had the necessary funds on that day when he was said to have been present before the Sub Registrar. There was no proof of purchase of stamps or evidence of any expenses as having been incurred by the plaintiff as expressions of readiness and willingness. The property that was offered to be sold itself was only 7/22 shares and that is how the defendant believed when he signed the agreement but the plaintiff had caused recitals to be filled to suit his own convenience by allowing the extent agreed to be sold as 7/36 share instead of 7/22 share which was agreed.

3. The judgment of the trial court is peculiar to the advantage of the plaintiff in listing the points in favour of the

plaintiff in seriatim from firstly to tenthly and has literally met everyone of the objection as the counsel brings before me. I would notice that in an agreement of sale, the most crucial issue for consideration is the requirement of readiness and willingness as Section 16(c) mandates. The Section contains an explanation to state that it shall not be necessary to deposit the amount unless the court orders so, for proof of readiness and willingness. It is brought through judicial decisions that a plaintiff need not jingle coins in court to prove his financial status. The amount involved was not too big a sum and if the plaintiff had issued a notice soon after his alleged inability to secure the sale deed by virtue of the absence of the defendant where the plaintiff had expressed his offer to pay the balance and secure the sale deed through a notice, I would take the readiness and willingness were amply demonstrated. I cannot allow for an argument to be brought that the property that was contemplated to be sold was only 7/22 share. If the document recites 7/36 share, it will be too fragile a defence to state that he signed the document with no recitals as regards the extent of property to be sold and the plaintiff had filled it up later. If the defendant would be so imprudent as to cast his signatures without appropriate recitals and left it to the plaintiff to fill them up later, he ought to take the consequences for his own indiscretion and cannot make a virtue out of his full fool-hardiness. The requirement of NOC for an

agricultural land, according to the learned counsel, must have been carried through with a request for such a certificate to be issued from authorities by the plaintiff himself and he did not do so. This, according to him, would show that the plaintiff was not ready and willing. The Transfer of Property Act casts rights and duties of vendors and vendees and it shall be always the duty of the vendor to do every act to make perfect a transaction of sale. If, for a purchase of property which is an agricultural land, No Objection Certificate was necessary, unless there was a recital in the sale agreement that the plaintiff must apply and take at his own risk, there is no escape for an inference that the duty was always on the vendor to secure the necessary certificate to make perfect the transaction of sale. I will not find a circumstance that the defendant has obtained a NOC as a factor against the plaintiff's readiness. Even the plea that in his own application, he had applied for permission only for 7/22 share, could mean that the defendant's own mistaken assumption of what he thought he was selling. A document to be vitiated by mistake ought to be a mutual mistake and the unilateral mistake cannot operate to benefit him if he was under the impression that he was selling 7/22 share but the document contained a reference of agreement of sale of 7/36 share.

4. The manner of taking endorsement by the Sub-Registrars is merely a matter of practice which is not in any way

statutorily mandated. If there is no mandate for how an endorsement has to be made, the fact that the Registering Officer did not make an endorsement at every page to render a document to be suspicious or expect the document to be proved by calling any person from the Registering Office.

5. There is literally no point of law worthy of consideration in the appeal. I maintain the judgments already rendered and hold that there arises no substantial questions for consideration. Second appeal is dismissed.

(K.KANNAN)
JUDGE

17.08.2015
sanjeev