

RSA No.6242 of 2015 (O&M)

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

RSA No.6242 of 2015 (O&M)

Date of Decision: December 24, 2015

Smt. Dharambiro & others

...Appellants

Versus

Raja Ram (dead) through LRs Kishan & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Sohna, dated 20.12.2014, whereby, suit for possession by way of specific performance of agreement to sell dated 16.11.2005, has been decreed against the appellant-defendants and the appeal preferred by them against the said judgment has been dismissed by the Additional District Judge, Gurgaon, on 09.11.2015.

It is the contention of the learned counsel for the appellants that the appellant-defendants have contested the agreement to sell by taking a plea that the same was not executed by them. He contends that although, an expert witness has been produced by the respondent-plaintiff who proved the thumb

impressions of the appellant-defendants but the suspicious circumstances shrouded the agreement to sell with doubt such as not knowing the name of the deed writer/typist by the respondent-plaintiff as also his two attesting witnesses. Further, both attesting witnesses being residents of the village of the plaintiff, which also casts suspicion. His further contention is that on second extension which has been referred to in the agreement, there is only one thumb mark of one of the appellant-defendants and thumb marks of the other two appellants are not on it. Further that the name of one of the witnesses at the time of the extension is hand-written, whereas, the contents of the document are typed which indicates that no agreement to sell was executed and further extensions were granted on the basis of which the present suit was filed. He, thus, contends that when the document itself is shrouded with suspicion, the same could not have been relied upon by the Courts below to grant the relief to the respondent-plaintiff. His further contention is that the requirement of Section 16 (c) of the Specific Relief Act, 1963, has not been complied with as it has two essential components, namely, readiness and willingness. Merely, in view the fact that the respondent had gone to the office of the Sub-Registrar and executed an affidavit there which has been duly attested by the Sub-Registrar and the suit has been filed within a period of two days after the said date, would not prove his readiness. To support this contention, he

has placed reliance upon the judgment of the Hon'ble Supreme Court in N.P. Thiruganam (Dead) by LRs Vs. Dr. R. Jagan Mohan Rao, 1995 (5) SCC 115, in para 5 wherein it has been said that the amount of consideration which has to be paid to the defendant must of necessity be proved to be available. In His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar, 1996(4) SCC 526, the Hon'ble Supreme Court has again held that there being no documentary evidence to prove the stand that the plaintiff has ever funds to pay the balance of consideration, the readiness cannot be said to have been proved. Counsel also contends that the affidavit with regard to the presence of the petitioner on 22.03.2006, has not been duly proved as the Sub-Registrar has not appeared in the witness box. He, accordingly, contends that the impugned judgments and decree passed by the Courts below cannot be sustained and the suit deserves to be dismissed.

I have considered the submissions made by the learned counsel for the appellants and with his able assistance have gone through the impugned judgments but do not find any force in the same.

The first contention of the learned counsel for the appellants that with regard to the agreement to sell having not been executed by the appellant-defendants, cannot be accepted as there is overwhelming evidence which has been brought on record which

proves beyond doubt that the said agreement to sell has been duly executed. The onus with regard to the fraud having been played while disputing the agreement to sell, was upon the appellant-defendants but they have not been able to establish the same. The agreement to sell having been proved, the same cannot be faulted with.

As regards the contention of the learned counsel for the appellants that there are suspicious circumstances shrouded around the agreement to sell dated 16.11.2005 such as the name of the document writer/typist is not known to the respondent-plaintiff and his two attesting witnesses, suffice it to say that it is not a mandate of the statute that the name of the document writer/typist should have been disclosed or it should have been a part of the document. The document having been duly typed and having been proved, this would not lead to a conclusion that there were suspicious circumstances.

As regards the contention of the learned counsel for the appellants that none of the witnesses was of the village of the appellant-defendants, suffice it to say that it was for them to have not executed the agreement if there was no witness of their own village. As regards the contention that the first extension has been thumb marked by all the three appellants but the second extension is only thumb marked by one of them, suffice it to say that it would not make

any difference so far as the due execution of the agreement to sell is concerned and in any case, the suit is within the limitation even if the second extension is not accepted.

Assertion of the learned counsel for the appellants that the affidavit which has been produced by the respondent-plaintiff about his presence before the Sub-Registrar on 22.03.2006, the date fixed in the second extension for execution of the sale deed, it has not come on record rather, the counsel could not dispute that there has been no objection to the said document having been exhibited when the same was produced in Court. In the cross-examination also no such suggestion has been put to the plaintiff.

As regards the contention of the learned counsel for the appellants that no readiness is proved on the part of the respondent-plaintiff as he has not been able to state specifically with regard to the remaining consideration amount being available with him nor has he placed any evidence on record with regard to the source of the said huge amount of more than 18 lacs, the same also cannot be accepted in the light of the fact that nothing has even been suggested to the respondent-plaintiff with regard to the amount being not available with him or that he has not taken the said amount to the office of the Sub-Registrar on 22.03.2006 as also with regard to the source of remaining consideration amount which he asserts that he had taken alongwith him on 22.03.2006 when he appeared before

the Sub-Registrar.

The judgments on which reliance has been placed by the learned counsel for the appellants, would not be applicable to the facts and circumstances of the present case although the principle as has been laid down therein cannot be doubted. The facts and circumstances of each case determine and/or prove the readiness and willingness on the part of the person who has asserted that the sale deed be executed as per the agreement to sell. In the present case, the respondent-plaintiff has been able to prove his readiness and willingness to perform his part of the contract, whereas, the appellant-defendants have failed to do so.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.15745-C of 2015

In view of the order passed in the main appeal, the present application for stay of the operation of the impugned

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judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

December 24, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE