

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

**R.S.A No.1235 of 2013(O&M)
Date of decision :26.10.2016**

Rakesh

..... Appellant

Versus

Banwari Lal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.J.P.Sharma, Advocate
for the appellant.

Mr. A.P.Bhandari, Advocate
for the respondents.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 07.12.2012 passed by the learned District Judge, Narnaul, whereby the appeal filed by the legal representatives of plaintiff-Jugal Kishore against the judgment and decree dated 11.01.2010 passed by the learned Civil Judge (Jr. Division), Narnaul, has been dismissed.

2. Deceased-plaintiff-Jugal Kishore has filed the suit for specific performance of the agreement to sell dated 18.05.1996 with respect to the sale of the house in dispute.

3. As per averments in the plaint, one Satyanarain, the power of attorney of defendants no.1 to 3 executed an agreement to sell dated 18.05.1996 in favour of the plaintiff for the sale of the house in dispute for a sum of Rs. 53,000/-. Rs. 8000/- was paid as earnest money. The target date for execution of the sale deed was fixed to be 20.08.1996.

Defendants no. 4 to 7 took the responsibility for execution of the sale deed. Defendants committed default to comply with the terms and conditions of the said agreement. Hence, the suit.

4. The suit was contested by defendants no.1 and 3 on the grounds *inter alia* that Satyanarain was never appointed as general power of attorney by defendants no.1 and 2 and the agreement dated 18.05.1996 is without any basis and is a forged document. They had no knowledge about the agreement to sell dated 18.05.1996 and are not bound by the same. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 02.01.2007:-

1. Whether there was an agreement to sell dated 18.05.1996 between the parties as alleged?OPP
2. Whether plaintiff is entitled to decree of specific performance of contract and in alternative an amount of Rs. 53,000/- with interest as prayed for?OPP
3. Whether present suit is not maintainable?OPD
4. Whether plaintiff has no locus standi to file the present suit?OPD
5. Whether present suit is hopelessly time barred?OPD
6. Whether present suit is bad for want of non-joinder and misjoinder of necessary parties?OPD
7. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court vide impugned judgment and decree dated 11.01.2010 dismissed the suit of the plaintiff-appellant.

7. Aggrieved with the aforesaid judgment and decree dated, the legal representatives of the deceased-plaintiff-Jugal Kishore preferred the appeal. The same has also been dismissed by the learned District Judge, Karnaul, vide impugned judgment and decree dated 07.12.2012. Hence,

this Regular Second Appeal.

8. I have heard Mr. J.P.Sharma, Advocate, learned counsel for the appellant, Mr. A.P.Bhandari, Advocate, learned counsel for the respondents and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the execution of the agreement to sell dated 18.05.1996 is proved from the evidence adduced by the appellant. It is also proved that the plaintiff was ready and willing to perform his part of contract. He has already paid Rs. 8000/- as earnest money. The remaining funds were available with him, which were to be paid at the time of registration of the sale deed. Thus, he contended that once the execution of the agreement to sell was established, the appellant-plaintiff was entitled for decree and the learned Courts below have wrongly dismissed the suit.

10. On the other hand, learned counsel for the respondents contended that the alleged agreement is a forged document. Satyanarain was never appointed as general power of attorney by defendants no.1 and 2. Plaintiff has not brought on record any document to show that said Satyanarain was their power of attorney. He further contended that the agreement to sell is a forged document. It is evident from the fact that the last page of the agreement is not original, rather the same is a photocopy. Thus, he contended that as it is not established that Satyanarain was duly appointed attorney of defendants no.1 and 2, the owner of the property, so the said agreement is not binding on the rights of the defendants.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed that the complete agreement has not

been produced in the Court by the plaintiff. The said agreement was stated to be consisting of three pages. In his evidence, plaintiff has only produced two pages in original and the third page was the photocopy. The request of the plaintiff to lead the secondary evidence was declined by the learned trial Court. So, third page of the agreement which was a photocopy cannot be taken into consideration. Thus, only the incomplete agreement to sell has been brought on record by the plaintiff. Thus, it cannot be stated that the due execution of the agreement to sell was established.

13. Moreover, it is the admitted case of the plaintiff-appellant that the agreement to sell dated 18.05.1996 was executed by one Satyanarain alleging himself to be the power of attorney of defendants no.1 and 2, the owner of the suit property. But, the plaintiff has not produced any documentary evidence to establish that said Satyanarain was duly appointed attorney of defendants no.1 and 2. The copy of said power of attorney has not been placed on record. Thus, in the absence of the said power of attorney, it cannot be concluded that said Satynarain was attorney of defendants no.1 and 2 and he was duly authorized to sell the suit property on their behalf. Therefore, the agreement to sell dated 18.05.1996 executed by said Satyanarain, who is not proved to be the attorney of defendants no.1 and 2, cannot be stated to be binding on the rights of defendants no.1 and 2 and plaintiff cannot seek the specific performance of the said agreement.

14. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned

Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 26, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No