

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2411 of 2016 (O&M)
Date of Decision : 15.12.2016

Reeta Sethi @ Mamta

....Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Dinarpur, Advocate with
Mr. Subhash Godara, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal against concurrent judgments and decrees passed by Courts below decreeing the suit of plaintiffs for specific performance of agreement to sell dated 10.02.2005 on receipt of balance sale consideration.

2. It is admitted case of parties including the defendant-appellant that Kasturi Lal (since deceased now represented by his legal heir) entered into an agreement to sell suit land measuring 16 *kanals* 16 *marlas* @ ₹4,50,000/- per acre and received ₹50,000/- as earnest money. The date for execution of sale deed was fixed as 25.06.2005, which was later on extended to 25.07.2005.

3. In order to have a clear idea of admitted facts, it will be relevant to extract pleadings of defendants no. 1 and 2 in para 2 of the preliminary objections, which reads as follows:-

“2.The agreement was executed on 10.02.2005 between the plaintiffs and defendant no. 1 for the sale of the land owned by the defendant no. 1. The plaintiffs paid ₹50,000/- on 10.02.2005 and agreed to get the sale deed in their favour on or before 25.06.2005 after making the balance payment. The plaintiffs were not

able to arrange the balance amount and other expenses to get the sale deed in their favour. On 14.02.2005, the plaintiffs requested the defendant no.1 to extend the date from 25.05.2005 to 25.07.2005. The plaintiffs further paid ₹50,000/- only to defendant no. 1 on 14.02.2005. The typist/deed writer mentioned the date as 25.07.2004 instead of 25.07.2005 (25.07.2005) after the advice of the plaintiffs.”

4. Plaintiffs have alleged that they always remained ready and willing to perform their part of the contract and appeared before the Sub-Registrar at Naraingarh alongwith balance sale consideration of ₹8,50,000/- vide two bank drafts dated 23.07.2005 bearing nos. 012024 and 012025 issued by the Panchkula Central Cooperative Bank Limited at Naraingarh (Ambala). They waited for defendant no. 1 who did not turn up and plaintiffs got their presence marked before the Sub-Registrar by swearing an affidavit. Thereafter, they served legal notice on defendant no. 1 through their counsel on 30.07.2005, which was duly replied by defendant no. 1 through his counsel. Defendant no. 1 had also issued notice dated 25.07.2005 through his counsel wherein he admitted execution of agreement to sell and extension of time but took the plea that there was confusion about the extended date. The same was also replied by plaintiffs. Thereafter, plaintiffs visited defendant no. 1 several times but he did not execute the sale deed as per agreement, hence this suit.

5. In written statement, defendants admitted the facts of execution of agreement, receipt of earnest money on the date of agreement and another sum of ₹50,000/- on 14.02.2005 when the date for execution of agreement was further extended. However, they resisted the claim of plaintiffs on the solitary plea that there was confusion regarding the date for execution of the

sale deed as in the agreement it was got typed as 25.07.2004 instead of 25.7.2005.

6. I have heard learned counsel for the appellant and perused the paper-book and lower Court record with his assistance.

7. Drawing my attention towards agreement (Ex. P-1), learned counsel for the appellant has argued that there is overwriting in the agreement on the date fixed for execution of the sale deed. By overwriting figure 2 in the date 25.2.2005 has been changed to 25.6.2005. He has further argued that in the writing extending the time for execution of the sale deed, dates '25.06.2004' and '25.07.2004' were changed to '25.06.2005' and '25.07.2005', respectively. He has also argued that the relief of grant of specific performance of agreement to sell is discretionary relief which cannot be allowed to a party which made an interpolation in the agreement.

8. On perusal of paper-book and lower Court record, I find no substance or merit in the submission of learned counsel for the appellant. This appeal has been filed by Reeta Sethi @ Mamta, one of the legal heirs of Kasturi Lal. She was impleaded after death of Kasturi Lal and cannot travel beyond the pleadings in written statement filed by Kasturi Lal, wherein he had admitted that date for execution of the sale deed was initially fixed as 25.06.2005 and was later on extended to 25.07.2005. This plea of the appellant that plaintiffs-respondents no. 2 and 3 by playing trick with deed writer got the date mentioned as 25.07.2004 instead of 25.07.2005, is not believable. There was no need for plaintiffs to play such a trick. Moreover, in a writing executed in the year 2005, the date for execution of the sale deed could not be 25.07.2004. The mistake of date appears to be clerical. The agreement was executed on 10.02.2005 and it

appears that scribe mentioned the date as 25.02.2005 for execution of the sale deed which was corrected to 25.06.2005. In the notice (Ex. P-6), issued by Kasturi Lal through his counsel, it is specifically mentioned that date for execution of the sale deed was fixed as 25.06.2005. In the written statement, defendants had taken specific plea that the date for execution of the sale deed was extended to 25.07.2005. Plaintiffs while producing evidence have been able to prove that they were having the balance sale consideration and were also present in the office of Sub-Registrar on stipulated date. However, defendants instead of appearing in the office of Sub-Registrar issued a notice to plaintiffs, which they duly replied. Naveen Anand, one of the defendants, while appearing as DW-1 has admitted that the date for execution of the sale deed was extended to 25.07.2005. The plea taken by defendants and the evidence produced on record show that there was no confusion in the mind of Kasturi Lal or even his legal heirs or either of the defendants about the date fixed for execution of the sale deed and the plea has been raised to this effect only to back out from the agreement.

9. No other argument has been advanced by learned counsel for the appellant.

10. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

December 15, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No