

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

RSA No.3397 of 2013 (O&M)

Date of Order:21.11.2017

Mohan Lal

..Appellant

Versus

Chaman Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Gurna, Advocate,
for the appellant

Mrs. Gurnam Kaur Turka, Advocate,
for the respondent

ANIL KSHETARPAL, J (Oral)

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for specific performance of the agreement to sell with a consequential relief of permanent injunction on the basis of agreement to sell dated 07.09.1998, executed by the defendant in favour of the plaintiff on receipt of Rs.17000/- as earnest money out of sale consideration of Rs.18000/-.

On the other hand, defendant pleaded that the agreement to sell is a forged and fabricated document as the plaintiff was a mediator in a dispute between Ved Parkash and the defendant and under that pretext his signatures were taken.

Both the Courts after appreciating the evidence available on the file, decreed the suit and held that the agreement to sell is proved on payment of the earnest money. Learned courts have relied upon the statement of the attesting witness i.e. Ashok Kumar and also the statement

of Surjit Singh son of other attesting witness Hazura Singh.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the plaintiff has failed to prove that the sale deeds were not being registered on account of some restrictions by the Sub-Registrar. He has further submitted that defendant had filed a suit for declaration in which the agreement to sell dated 07.09.1998 was found to be suspicious. He has further submitted that the relief of specific performance of agreement to sell is discretionary. He has further referred to the statement of Kuldeep Kumar, the scribe and tried to impress upon the Court that statement of Kuldeep Kumar in the other suit and in this suit is some what contradictory with regard to the fact that who typed the agreement.

It may be noticed here that the agreement to sell is dated 07.09.1998. The target date for execution and registration was 23.06.1999. The suit was filed on 31.08.1999. It was not the issue before the Court that whether there was any restriction imposed by the Sub-Registrar for registration of the sale deed or not? Once the plaintiff had filed a suit promptly within a period of less than two months, the argument of learned counsel for the appellant that since the plaintiff has failed to bring any evidence that there was any restriction on the execution and registration of the sale deed would be of no significance.

Next submission of learned counsel for the appellant is that in the other suit filed by the appellant-defendant for declaration, in which the agreement to sell dated 07.09.1998 was found to be suspicious.

It may be noticed that the aforesaid civil suit was decided on 11.08.2010, whereas the suit for specific performance of the agreement to sell came to be decided on 12.04.2007. A copy of the judgment was duly exhibited in the other civil suit.

Learned counsel for the respondent has further pointed out that in an appeal filed by the plaintiff, this finding of the Court on the fact that agreement to sell is suspicious was reversed and the Court had held that the validity of the agreement to sell would be examined in the suit for specific performance only. Learned counsel for the appellant could not dispute this position.

Next argument of learned counsel for the appellant is that the relief of specific performance of agreement to sell is discretionary in view of Section 20 of the Specific Relief Act.

No doubt, the relief of specific performance of the agreement to sell is discretionary but such discretion is to be exercised on sound principles. The discretion cannot be exercised arbitrarily. In this case, both the Courts have exercised discretion and granted relief of specific performance of the agreement to sell.

Learned counsel for the appellant could not point out any error in the discretion exercised by the Courts below.

Learned counsel for the appellant has submitted that the plaintiff had claimed that he was put in possession, however, the plaintiff failed to prove that fact. He has referred to the findings of the trial Court, wherein plaintiff could not prove on file that possession was delivered. In the opinion of this Court, such findings would not result in denial of performance of the agreement to sell.

It is a case of open plot/land. Ownership of the open land/plot is always deemed to be with the owner. In these circumstances, merely because the plaintiff failed to bring on record the evidence to prove delivery of possession, that would not dis-entitle the plaintiff from seeking specific performance of the agreement to sell.

Last submission of learned counsel for the appellant is that the statement of scribe Kuldeep Kumar in the previous suit and in this suit is some what different.

Learned counsel for the appellant has referred to the fact that in the earlier suit scribe had stated that he does not know typing. However, in the present suit, Kuldeep Kumar, the scribe has stated that he knows typing. In the considered opinion of this Court, such argument would not impve the case of the defendant-appellant. The agreement to sell is attested by two marginal witnesses, one Askoh Kumar and the other is Hazura Singh. Ashok Kumar had appeared in the witness box and proved the execution of the Will. Even Surjit Singh son of Hazura Singh (deceased attesting witness) has appeared in the witness box and identified signatures of Hazura Singh.

In view of the above said discussion, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

November 21, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No