

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1593 of 2016 (O&M)
Date of decision:21.11.2017

Kehar Singh

...Appellant

Versus

Smt.Kulwant Kaur

...respondent

RSA No.5186 of 2016 (O&M)

Kulwant Kaur through her LR

...Appellant

Versus

Kehar Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vikas Bahl, Sr. Advocate with
Mr.N.K.Vadhera, Advocate for the appellant in
RSA No.1593 of 2016 and for the respondent in
RSA No.5186 of 2016.
Mr.K.S.Khehar, Advocate for the appellant in
RSA No.5186 of 2016 and for the respondent in
RSA No.1593 of 2016.

ANIL KSHETARPAL, J. (ORAL)

CM-13454-C-2016 in RSA-5186-2016

Prayer in this application is for condonation of delay of 182 days in filing the appeal.

Counsel for the respondent-Kehar Singh does not contest this application.

In view of the above, application is allowed, as prayed for.
Delay of 182 days in filing the appeal is condoned.

Main Appeal(s)

By this judgment, I shall be disposing of two appeals bearing RSA No.1593 of 2016 and RSA No.5186 of 2016, arising out of a common judgment. RSA No.1593 of 2016 is filed by plaintiff-Kehar Singh, praying for grant of relief of specific performance of agreement to sell dated 06.09.1999, whereas RSA No.5186 of 2016 is preferred by Kulwant Kaur-defendant against the judgment directing refund of earnest money.

Plaintiff-Kehar Singh, who is appellant in RSA No.1593 of 2016, had filed a suit for possession by way of specific performance of the agreement to sell dated 06.09.1999. It was pleaded that parties had entered into an agreement to sell on payment of Rs.6 lacs out of total sale consideration of Rs.8 lacs. It was further pleaded that as per agreement to sell, the sale-deed was to be executed on 29.09.2003.

On the other hand, defendant pleaded that agreement to sell is a forged and fabricated document. It was further pleaded that there was no agreement to sell. Kehar Singh-plaintiff had given loan of Rs.50,000/- to one Shri Mastan Singh, who was related to them. As a security, original sale-deed of half share was kept as security by Kehar Singh. Pleadings of the defendant in para 1 of the preliminary objections read as under:-

“....The defendant never agreed to sell the suit property to the plaintiff. The alleged agreement to sell dated 6.9.1999 is forged and fabricated one. It is worthy to mention here that on Sh.Mastan Singh, who was the husband of the sister of the daughter-in-law of the defendant, borrowed a sum of Rs.50,000/- from Kehar Singh plaintiff about six years ago and the sale deed of ½ share of the suit property was kept by Kehar

Singh as security for advancing Rs.50,000/- to said Mastan Singh. Said Mastan Singh returned the aforesaid amount of Rs.50,000/- along with interest to plaintiff and demanded back the said deed of the suit property, handed over to him as security but the plaintiff put off the matter with the assurance that he will return the original sale-deed.”

Learned trial court, after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

Defendant filed the first appeal. Learned first appellate court, after re-appreciating the evidence available on the file, has ordered refund of the earnest money. That is how, two appeals have been preferred one by the plaintiff and another by the defendant.

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

Learned counsel for the plaintiff-appellant in RSA No.1593 of 2016 has submitted that there is concurrent findings of fact in favour of the plaintiff that the agreement to sell has been proved. He has further submitted that first appellate court has made out a new case in favour of the defendant. He has next submitted that it was not the case of the defendant that the agreement to sell was executed as a security document.

It is clear from the reading of the assertions made in the written statement that the defendant had in fact pleaded that Mastan Singh, who was relative of the defendant, had borrowed a sum of Rs.50,000/- from the plaintiff Kehar Singh six years ago and that is how the sale-deed with respect to half share of the property was kept by Kehar Singh as a security.

In view of these pleadings, it cannot be said that learned first

appellate court has made out a new case in favour of the defendant. No doubt, it has not been pleaded by the defendant that she has also signed some documents. However, the pleadings as per Order 6 Rule 2 CPC have to be concise, restricted to the facts only and the evidence is not required to be pleaded.

Still further, there is another reason for denying the specific performance of the agreement to sell dated 6.9.1999. It is clear from the reading of the agreement that 75% of the total sale consideration was paid at the time of agreement to sell. Still no reason is forthcoming as to why the target date for execution of the registration of the sale-deed was fixed after a period of more than four years, i.e. 29.09.2003. Though, learned counsel for the plaintiff-appellant in RSA No.1593 of 2016 has submitted that the tenants were in possession of the property but such plea is not tenable in view of the fact that the agreement to sell does not show that the target date for execution and registration of the sale-deed was fixed after a period of more than four years only because the tenants were in possession of the property.

It is also not in dispute that relief of specific performance of the agreement to sell is a discretionary relief, in view of Section 20 of the Specific Relief Act. Learned first appellate court on appreciation of evidence has found in this case that specific performance cannot be granted. One should not overlook the fact that undisputedly the property is situated in Ludhiana city, which is an industrial town of the State of Punjab. The prices in the city increase more rapidly as compared to the villages. Once it is proved that 75% of the payment has been made, the reason for fixing the target date after a period of four years creates a suspicion.

In the last, learned counsel for the plaintiff has submitted that once the first appellate court has ordered for refund, interest on the same should have ordered as the plaintiff had paid a sum of Rs.6 lacs in the year 1989. There is force in the submission of the learned counsel for the plaintiff. Learned first appellate court has committed an error in ordering the refund of the amount without interest. Appeal filed by the plaintiff- Kehar Singh with respect to payment of interest is liable to be accepted.

Learned counsel for the defendant-appellant in RSA No.5186 of 2016 has submitted that Joga Singh, the attesting witness, had in fact purchased the stamp papers used for execution of the agreement to sell. He has further submitted that entry of agreement to sell is not made in the register of the scribe, which makes the agreement to sell doubtful. He has further submitted that PW2, the attesting witness, could not identify the defendant Kulwant Kaur. He has next submitted that the plaintiff has admitted in his evidence that he had not met the defendant before 06.09.1999.

As far as the first argument is concerned, a bare look at the agreement to sell would show that the stamp papers for execution of the agreement to sell duly bears the signatures of the defendant Kulwant Kaur. Hence it is Kulwant Kaur who had purchased the stamp papers on which agreement to sell was executed. Therefore, the argument of the learned counsel for the defendant-appellant in RSA No.5186 of 2016 is factually incorrect.

The second submission of the learned counsel for the defendant is that agreement to sell is not entered in the register of the scribe. In the considered opinion of this Court, this fact alone cannot be taken to ignore a

written agreement to sell. The agreement to sell is signed by the defendant. It always depends upon the parties whether they want the scribe to make an entry in the register or not.

Learned counsel for the defendant-appellant has submitted that the attesting witness, PW-2, has not even identified the defendant. It will be noticed that original defendant, i.e. Kulwant Kaur, had died before start of the evidence of the plaintiff. Learned counsel for the appellant also submitted that the attesting witness could not identify the defendant from the photograph. PW-2, the attesting witness, was examined after a period of 11 years from the date of agreement to sell. The attesting witness is not expected to remember the face of the party to whom he has seen only once.

The last argument of the learned counsel for the defendant that since the plaintiff and the defendant have never met before 06.09.1999, therefore, the agreement to sell is surrounded by suspicious circumstances.

I have considered the aforesaid submissions.

The agreement to sell is not required to be proved in the manner the Will is to be proved. The agreement to sell is a contract between the parties in writing. Both the courts below have found that the defendant has signed the agreement to sell. Her signatures were found on the front page as well as on the noting at the back page where the stamp vendor had put an entry in this regard. Defendant has failed to lead any evidence as to how her signatures appeared on the agreement to sell.

For the reasons recorded above, RSA No.1593 of 2016 is partly allowed. The plaintiff-appellant shall be entitled for refund of earnest money as ordered by the learned first appellate court along with interest @ 7.5% per annum from the date the payment till the amount is refunded/paid

to the plaintiff. However, RSA No.5186 of 2016 filed by the defendant is hereby dismissed. Pending application(s), if any, also stands disposed of.

21.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No