

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.3337 of 2014 (O&M)

Date of Decision:29.08.2017

Surgo Devi

...Appellant

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate
for the appellant.

Mr. D. K. Nagar, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-7728-C-2014

Prayer in this application is for condonation of delay of 111 days
in refilling the appeal.

For the reasons mentioned in the application, which is supported
by an affidavit, the delay of 111 days in refilling the appeal is condoned.

Main case:

Defendant is in Regular Second Appeal against the judgment
passed by the learned Additional District Judge, Pathankot, dated 10.07.2013.

Plaintiff-respondent filed a suit for possession by way of specific
performance of the agreement to sell dated 18.10.1996. Plaintiff had pleaded
that the defendant had entered into an agreement to sell with him with respect
of land measuring 62 Kanals 2 Marlas for a total sale consideration of
Rs.17,00,000/-. Amount of Rs.2,00,000/- was paid as earnest money. Target
date for execution and registration of sale deed was fixed
as 30.11.1997. It is further pleaded that on 27.11.1997 the date for execution

of sale deed was extended as sons of the defendant had filed a civil suit and there was interim order restraining the defendant from alienating the property.

Plaintiff further pleaded that after the decision of the civil suit dated 08.04.1999 plaintiff sent a notice dated 12.04.1999 to the defendant calling upon her to come in the office of sub-registrar on 22.04.1999. Plaintiff further pleaded that the plaintiff got prepared a banker cheque payable in favour of the defendant Surjo Devi for balance sale consideration of Rs.15,00,000/- on 21.04.1999. It was further asserted that the plaintiff remained present in the office of sub-registrar on 22.04.1999, however, defendant did not come forward to execute the sale deed.

In the written statement defendant admitted execution of the agreement to sell. However, defendant denied that the date was extended on 27.11.1997.

Learned trial Court after appreciating the evidence available on the file held that agreement to sell is admitted. However, the Court choose to grant alternative relief to the plaintiff. The Court ordered that the plaintiff would be entitled to refund of double the amount i.e. Rs.4 lakhs along with interest.

Plaintiff filed the first appeal. Learned first Appellate Court after re-appreciating the evidence available on the file and after recording cogent reasons had ordered specific performance of the agreement to sell.

I have heard the 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 endorsement of extension the date on 27.11.1997 is forged and fabricated. He has further submitted that the plaintiff was not ready and willing on 30.11.1997 to perform his part of the contract. He has further submitted that

the civil suit for specific performance of agreement to sell has been filed after a period of 2 years.

On the other hand, learned counsel for the respondent has supported the judgment passed by the learned first Appellate Court. He has further submitted that pursuant to decree passed by the first Appellate Court the sale deed has already been executed in favour of the plaintiff on 14.05.2015 and even possession has been delivered.

As regard the first submission of the learned counsel that the endorsement of extension, dated, 27.11.1997 is forged and fabricated, it is suffice to say that the endorsement for extension of the date bears the thumb impressions of the defendant-appellant. It is recorded in the endorsement for extension of date that the sons of defendant-appellant have filed a suit and therefore, the defendant is unable to execute the sale deed, hence, the date for execution and registration of sale deed is being extended. The reason for extension is obvious because the factum of filing of suit by the sons of the defendant is an admitted fact. It is also admitted that there was injunction in favour of the sons and against the defendant.

The second argument of the learned counsel is that the plaintiff is not proved to be ready and willing to perform his part of the contract on 30.11.1997. In my considered opinion, the argument has no force because a reading of the writing for extension of the date proves that the date was extended on account of pendency of the civil suit filed by the sons of the defendant. The defendant was already in litigation with her sons. The suit for injunction was filed on 18.01.1995. During the pendency of the suit defendant entered into an agreement to sell. Still further it is positive case of the plaintiff, earlier suit filed by the sons of defendant was decided on 08.04.1999 and the plaintiff served with a notice calling upon her to come and execute the

sale deed. Plaintiff even got prepared demand draft/banker cheque payable in favour of defendant with respect to the balance sale consideration. In these circumstances, there is no force in the arguments of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that the civil suit was filed after a period of 2 years from the date the suit filed by the sons was decided on 08.04.1999.

I have considered the arguments. However, I do not find any force in the same. It is not the case of the defendant that after the decision of the suit, plaintiff was informed and called upon to come and execute the sale deed. Plaintiff got prepared the banker cheque/demand draft in favour of the defendant for the balance sale consideration. As per endorsement, date for execution of sale deed was extended to 2 months after the decision of the suit filed by the sons of defendant no.1. The suit was decided in April, 1999 and hence as per endorsement, sale deed was to be executed and registered in June, 1999. Whereas, the suit for specific performance of agreement to sell was filed in January, 2001. In these circumstances, there is no force in the submission of learned counsel for the appellant that the suit filed by the plaintiff suffers from unexplained delay.

I do not find any good ground to interfere with the findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

29.08.2017
nt/parveen

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No