

104.

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

RSA-3799-2014 (O&M)

Date of decision:28.02.2017

KASHI RAM & ORS

.... Appellants

versus

JUWAHARA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Amarjit Singh Ahluwalia, Advocate,
for Mr. M.S. Randhawa, Advocate,
for the appellants.

HARI PAL VERMA, J.

The appellants, who are the legal representatives of defendant-Birju, have filed the present Regular Second Appeal against the judgment and decree dated 16.04.2014, passed by learned Additional District Judge, Narnaul, whereby the appeal filed by the defendant-Birju (since deceased) as well as the cross objection filed by the respondent-plaintiff against the judgment and decree dated 15.03.2011 passed by learned Civil Judge (Junior Division), Narnaul, were dismissed.

Briefly stated, the plaintiff (respondent herein) had filed a suit for specific performance against the defendant-Birju regarding 16 kanals land i.e. 160/949 share. The defendant entered into an agreement to sell on 06.05.1999 regarding 16 kanals land for a sum of

payment of ₹3,85,000/- to the defendant. The date of registration of sale deed was fixed as 06.08.1999 and it was made clear that in case, the defendant failed to execute the sale deed, then the plaintiff will have every right to get the sale deed executed at the expenses of defendant through the court. As per agreement, possession of the land was delivered to the plaintiff on 06.05.1999 and since then as per suit, the plaintiff is owner of the land as a prospective vendee. However, on 06.08.1999, the defendant did not come forward to execute the sale deed, though the plaintiff reached the Registrar's office along with balance sale consideration of ₹1 lakh and other expenses of registration. The plaintiff got attested an affidavit regarding his presence. Thereafter, the defendant served a notice dated 27.07.2000 which was received by the plaintiff on 29.07.2000. The plaintiff gave reply to the said notice on 08.08.2000, asking the defendant to execute the sale deed on 24.08.2000, but the defendant on the said date i.e. 24.08.2000 also did not turn up and the plaintiff, who was present with ₹1 lakh and other registration expenses, got marked his attendance-sheet in the Sub-Registrar's office. It was averred that the plaintiff was always willing and ready to execute the sale deed, but the defendant failed to execute the same. It was further averred that the defendant was again asked to execute the sale deed, but the defendant on 03.01.2001 refused to get the sale deed executed and, hence, the suit was filed.

On notice, the defendant resisted the suit and raised preliminary objections pertaining to maintainability, locus-standi, cause of action, estoppel and the plaintiff has not come with clean hands etc. On merits, it was contended that an agreement to sell was entered regarding 16 Kanals land against sale consideration of ₹5,25,000/- on 27.07.1998 and the plaintiff paid a sum of ₹60,000/- as earnest money and the remaining amount was agreed to be paid on 31.07.1998. Since the plaintiff could not make arrangement of balance amount, the date of sale deed was extended to 05.08.1998 and from 05.08.1998 to 13.08.1998. Again plaintiff could not make arrangement of the amount and the date was further extended to 22.02.1999 and thereafter to 05.09.1999. It was contended that till 24.02.1999, plaintiff could only make payment of ₹1,30,000/- and on 05.05.1999, he further made payment of ₹5,000/-. It was further contended that the plaintiff gave a proposal that in place of earlier agreement and repeated extensions on the date of agreement, one fresh agreement should be executed and accordingly, the plaintiff agreed to make payment of ₹1,35,000/-. The plaintiff had already paid an amount of ₹3,85,000/- regarding 16 kanals land. He requested the defendant that there is no benefit of affixing more stamp duty, as the defendant was concerned only with ₹5,25,000/- and the stamp duty expenses were to be borne by the plaintiff. In this manner, the defendant was taken into confidence and the agreement was written for a sum of ₹4,85,000/- and the plaintiff got executed an agreement wherein ₹3,85,000/- was shown to have

been paid upto 06.05.1999, whereas ₹1 lakh was the outstanding amount. On the basis of agreement dated 06.05.1999, the target date for execution of sale deed was fixed as 06.08.1999 and possession was delivered to the plaintiff being prospective vendee.

On pleadings of parties, the trial Court framed the following issues:-

- “i) Whether defendant had agreed to sell the suit land to the plaintiff vide an agreement dated 6.5.1999 for consideration of Rs.485000/- and had received Rs.385000/- as earnest money as alleged? OPP
- ii) Whether plaintiff has always been ready and willing and is still ready and willing to perform his part of contract? OPP
- iii) Whether plaintiff is entitled to the decree for specific performance of contract? OPP
- iv) Whether before agreement dated 6.5.1999 initially agreement dated 27.7.1998 was executed between the parties for selling the suit land for consideration of Rs.525000/- and later on, vide various agreements, last date for execution of sale deed was extended from time to time? OPD.
- v) to xii)
- xiii) Relief.”

Vide judgment dated 15.03.2011, the trial Court decreed the suit and has observed that in terms of agreement dated 06.05.1999, the plaintiff is in possession of suit land which was given at the time of agreement. Therefore, the defendant was directed to execute the sale deed after receiving the balance sale consideration.

Aggrieved against the above said judgment and decree dated 15.03.2011, the defendant-Birju filed an appeal, whereas the respondent-plaintiff filed cross objection. The cross objection was to the extent that the trial Court should have decreed the suit with costs. The learned Lower Appellate Court dismissed the appeal as well as cross objection vide judgment and decree dated 16.04.2014.

It is in the aforesaid circumstances, the legal representatives of the defendant-Birju (since deceased) have filed the present appeal.

Learned counsel for the appellants has argued that the trial Court has lost sight of the fact that the agreement to sell was executed, but the same was cancelled by compromise (Ex.D2) and an amount of ₹ 3,85,000/- was returned vide writing (Ex.D1). Both the courts below have not appreciated the fact that PW1-Tara Chand appeared, but he was not cross-examined due to non-availability of documents on file. Appellant was not given the opportunity to cross-examine PW1 by the learned trial Court. He further argued that the findings of the trial Court on issues No.1 to 3 are not correct.

I have heard learned counsel for the appellants.

Admittedly, the defendant has admitted his signature on the agreement to sell dated 06.05.1999. The plea as raised by the defendant is that as per writing Ex.D1, the amount of ₹3,85,000/- has been returned to the plaintiff-Juwahara against the agreement to sell which was cancelled. Though the said writing has been made inter se defendant-Birju and the plaintiff-Juwahara, but it does not bear the signature of Birju-defendant. The defendant and his witnesses have failed to establish that the amount of ₹3,85,000/- has been returned to the plaintiff against the agreement to sell dated 06.05.1999 and the agreement to sell was cancelled. Since the very agreement to sell dated 06.05.1999 having target date 06.08.1999 has been admitted by the parties and on the target date i.e. 06.08.1999, the plaintiff remained present before the office of Sub-Registrar, but the defendant did not appear, the courts below have rightly decreed the suit of the plaintiff. The fact that plaintiff remained ready and willing to get the sale deed executed and registered, is sufficient to prove that on the agreed date, he got his presence marked by way of affidavit before the Sub-Registrar's office. Since the defendant did not appear on the agreed date i.e. 06.08.1999, the plaintiff again asked the defendant to get the sale deed executed and registered on 24.08.2000, but even on that date, the defendant did not appear before the office of Sub-Registrar and the plaintiff got his presence marked. Interestingly, the possession of the suit land was delivered at the time of agreement and the plaintiff was continuing over suit land as a prospective vendee which is proved on

the basis of order dated 18.03.2004 passed by the Assistant Collector and order dated 13.09.2007 passed by the Collector. The defendant has admitted that he had entered into an agreement to sell on 06.05.1999 with the plaintiff and, therefore, the admission is the best evidence. In this manner, the very agreement to sell dated 06.05.1999 (Ex.P1) has duly been proved between the parties.

Thus, no substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

28.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No