

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

**RSA No.4471 of 2014 (O&M)
Date of Order: 11.10.2017**

Thakur Dass(since deceased) through his LRs and others

..Appellants

Versus

Sant Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nand Lal Sammi, Advocate,
for the appellants.

Mr. Dinesh Arora, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Although, learned first appellate Court had dismissed the application for condonation of delay of 41 days for cogent reasons and a limited appeal had come to this Court. However, taking into consideration the fact that it was the first appeal of the defendants, therefore, I permitted the parties to address arguments on merits.

Defendants-appellants are in regular second appeal against decree for possession by way of specific performance of the agreement to sell. Defendants-appellants had entered into an agreement to sell with the plaintiff on 17.01.2005. Out of sale consideration of Rs.3,20,000/-, Rs.1,50,000/- was received as earnest money. The agreement to sell was with respect to a house measuring 270 square yards situated in Kharkhoda, District Sonapat.

As per the agreement to sell, sale deed was to be executed on 16.12.2005. Plaintiff visited the office of Sub-Registrar on that day and got

his presence marked, however, defendants did not come present.

In the reply, the execution of the agreement to sell was denied by the defendants. However, it was admitted that there was a money lending transaction and Rs.50,000/- was payable to the plaintiff. It was pleaded that under that pretext, the agreement to sell was executed and signed.

Plaintiff in order to prove his case examined himself as PW1, attesting witness Charanjeet as PW3 and scribe of the agreement Ram Dutt as PW2. Plaintiff also produced on file original sale deeds by which the defendants had purchased the house in question. It was the case of the plaintiff that at the time of entering into an agreement to sell, original sale deeds dated 15.12.1989 and 22.12.1989 were handed over to him. Plaintiff further served a notice on the defendants on 29.12.2005 and called upon the defendants to come present in the office of Sub-Registrar on 16.01.2006. Plaintiff again visited the office of Sub-Registrar on 16.01.2006 and got his presence marked.

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

I have heard learned counsel for the parties at length and with their able assistance gone through the documents available in the paper book.

Learned counsel for the appellants has vehemently argued that attesting witness and the scribe do not support the case of the plaintiff as they have stated that the earnest money was not paid in their presence. He has submitted that since payment of earnest money has not proved, therefore, the agreement to sell cannot be specifically performed.

On the other hand, learned counsel for the respondent has submitted that both these witnesses have stated that the defendants had acknowledged the receipt of the earnest money and it is thereafter that the attesting witness and the scribe had signed the agreement to sell.

I have seen the photocopy of the agreement to sell produced before me. Agreement to sell is duly thumb marked by appellant no.1- Thakur Dass. Thumb impression of Thakur Dass appears on both the pages. Defendant no.2 has also thumb marked the agreement to sell on the second page. The agreement to sell is attested by two marginal witnesses, one Lamberdar and second Charanjeet, who has been examined as PW3. The entry of agreement to sell has also been entered by the scribe in his register where also defendants-appellants have put their thumb impressions. Apart therefrom defendants-appellants have also executed a receipt in token of having received the earnest money. Both the defendants-appellants have thumb marked the aforesaid documents.

It is further not in dispute that the plaintiff and the defendants are related. Once the parties are related, chances of any fraud or misrepresentation are very remote. Defendants-appellants have failed to prove their story that it was only a case of money lending. The agreement to sell is executed on a non-judicial stamp paper. It is in Hindi, which is a local language and duly thumb marked by both the defendants, who are husband and wife.

Keeping in view the aforesaid facts and particularly taking into consideration that an attesting witness has been examined, it is not possible to accept the argument of learned counsel for the appellants that the agreement to sell was not intended to be given effect to.

Still further as noticed above, defendants-appellants had purchased the property through sale deeds dated 15.12.1989 and 22.12.1989. It is positive case of the plaintiff that at the time of entering into an agreement to sell, original sale deeds were handed over. These original sale deeds duly exhibited were produced by the plaintiff in the Court. That itself proves that the agreement to sell entered into between the parties is a genuine document.

It may be noticed that the appellants while seeking condonation of delay had taken a factually incorrect plea. Learned trial Court decided the case on 31.10.2011. The same counsel applied for a certified copy on 16.11.2011. The copy was supplied to him on 22.11.2011. The same counsel filed an appeal on 12.01.2012 by taking a plea that the counsel has not informed the appellants. During the course of arguments, the same counsel admitted before the first appellate Court that he had informed the party. In any case, since I have already decided the appeal on merits, therefore, no further order is required.

For the reasons recorded hereinabove, I do not find any good ground to interfere with the judgment passed by the learned trial Court. The regular second appeal is dismissed.

October 11, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No