

108.

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

RSA-2336-2017 (O&M)

Date of decision:03.05.2017

AJIT SINGH

... Appellant

versus

SULKHAN SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. K.S. Kahlon, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-5698-C-2017

Prayer in the application filed under Section 149 CPC is to
make good the deficiency in the court fee.

For the reasons stated in the application, same is allowed
and the applicant-appellant is permitted to make good the deficiency in
the court fee.

CM-5697-C-2017

Prayer in the application filed under Section 5 of the
Limitation Act is for condonation of delay of 165 days in filing the
present appeal.

For the reasons stated in the application, same is allowed
and the delay of 165 days in filing the present appeal is condoned.

CM-5696-C-2017

Prayer in the application filed under Section 151 CPC is for condonation of delay of 165 days in re-filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 165 days in re-filing the present appeal is condoned.

RSA-2336-2017

The appellant-defendant has filed the present Regular Second Appeal against the judgment and decree dated 18.03.2016 passed by learned Additional District Judge (A), Gurdaspur, whereby his appeal against the judgment and decree dated 24.09.2012 passed by learned Civil Judge (Junior Division), Batala was dismissed.

Briefly stated, as per the plaint, the appellant-defendant-Ajit Singh (herein referred as defendant) executed an agreement to sell dated 05.04.2000 with the respondent-plaintiff-Sulkhan Singh (herein referred as plaintiff) in respect of land measuring 7 kanals -8 marlas bearing Khasra No.7R/9 situated at Village Mehtewal, Hadbast No.28, Tehsil Batala, District Gurdaspur, for a total consideration of ₹2 lakhs. It was agreed to execute and register the sale deed on or by 15.06.2001. At the time of agreement, the plaintiff had paid ₹1 lakh as earnest money and the balance amount was agreed to be paid at the time of execution of sale deed. On the agreed date i.e. 15.06.2001, the plaintiff went to the Tehsil compound along with balance sale consideration, but the defendant came at late hours and showed his inability to perform his part of the contract and assured to the execute the sale deed on the

next date. But he (defendant) kept on lingering the matter on the one pretext or the other. Hence, the plaintiff filed a suit specific performance and in the alternative, suit for recovery of ₹1 lakh by way of refund of the amount already advanced and compensation and damages against the defendant.

On notice, defendant appeared and filed his written statement denying the very agreement to sell being forged, fabricated, sham, bogus and without consideration and is a result of collusion and conspiracy of plaintiff, scribe and marginal witnesses. He submitted that the plaintiff along with his brother was carrying on the business of Commission Agency in association with his uncle Didar Singh and his son Jatinder Singh under the name and style of M/s Aulakh Commission Agent etc. at Harchowal, to whom the defendant sold his crops. He further submitted that the plaintiff and his associates owed huge amount, running into lacs, to the defendant on account of food grain sold to them from time to time. He requested them time and again to make the payment, but they had been dilly-dallying the payment on one pretext or the other. Ultimately, the defendant resorted to file a complaint before the District Consumer Redressal Forum, Gurdaspur in respect of the amount due and the present suit was nothing, but a counter blast to the said proceedings so invoked by the defendant.

To prove his case, the plaintiff examined PW1-Amrik Singh, Deed Writer, Qadian, who deposed that the agreement to sell dated 05.04.2000 (Ex.P1) was written by him and the contents thereof

were read-over and explained to the defendant and the plaintiff. After admitting the same as correct, parties signed and thumb marked the on the agreement. The said agreement was witnessed by Charan Singh and Sukhwinder Singh. PW-1 further deposed that he entered the said agreement (Ex.P1) at Serial No.1379 dated 05.04.2000 of his register. The plaintiff has further examined PW2-Kirpal Singh (i.e. son of Charan Singh, who was one of the witnesses to the agreement), who identified the thumb impression of his father on Ex.P1 as a marginal witness. The plaintiff himself appeared as PW-3 and reiterated the entire facts narrated in the plaint. The plaintiff also examined PW4-Arvind Sood, a Handwriting and Finger Print Expert, who after examining the thumb impressions, submitted his report (PW4/A) wherein it had been specifically mentioned that the alleged thumb impression of the defendant on the agreement (Ex.P1) tallies with his standard thumb impression.

The trial Court held that the agreement is not enforceable as the land bearing Khasra No.7R/9 i.e. 7 Kanals 8 Marlas is a joint holding and the defendant being one of the co-sharer, was not authorized to execute agreement to sell in respect of entire holding. Accordingly, the trial Court, vide judgment and decree dated 24.09.2012, decreed the suit for alternative relief of the plaintiff and he was held entitled to recover ₹1 lakh from the defendant with simple interest @ 6% per annum on the decretal amount from the date of filing of the suit till its realization.

Dissatisfied with the aforesaid judgment and decree dated 24.09.2012, the defendant filed an appeal. The plaintiff also filed cross objection under Order 41 Rule 22 CPC for grant of relief of specific performance instead of alternative relief. However, the Lower Appellate Court dismissed both the appeal as well as the cross objection.

It is in the aforesaid circumstances, the defendant (appellant herein) has filed the present Regular Second Appeal.

Learned counsel for the appellant-defendant has argued that the judgments and decrees passed by the courts below are patently illegal and against the facts proved on record. The suit filed by the respondent-plaintiff was liable to be dismissed in toto as the same was misconceived and stems out of a void agreement. The very agreement was not enforceable as the land in question is a joint holding in which the appellant-defendant is one of the co-sharer. As per the principle of caveat emptor, the buyer should be beware. The suit of the plaintiff was liable to be dismissed.

I have heard learned counsel for the appellant.

There is a concurrent finding of fact recorded by both the courts below that an agreement to sell dated 05.04.2000 was entered between the parties whereby the appellant-defendant agreed to transfer the land measuring 7 kanals -8 marlas bearing Khasra No.7R/9 situated at Village Mehtewal, District Gurdaspur, for a total consideration of ₹2 lakhs, and agreed to execute and register the sale deed on or by

15.06.2001. At the time of agreement, the defendant had received ₹1 lakh as earnest money and the balance was agreed to be paid at the time of execution of sale deed. On the agreed date i.e. 15.06.2001, the plaintiff went to the Tehsil compound along with balance sale consideration and necessary expenses, but the defendant came at late hours and showed his inability to perform his part of the contract and assured the plaintiff to execute the sale deed on the next date. But he (defendant) kept on lingering the matter on one pretext or the other. So, the defendant failed to perform his part of the contract. Therefore, the plaintiff was held entitled for recovery of earnest money of ₹1 lakh. The very execution of agreement (Ex.P1) has duly been proved. It was found registered at Serial No.1379 dated 05.04.2000 with the Deed Writer. PW2-Kirpal Singh, who was the attesting witness of agreement (Ex.P1), had also duly proved the agreement, which bears the thumb impression of his father as a marginal witness. PW4-Arvind Sood, Hand Writing and Finger Print Expert, had also proved on record his detailed report Ex.PW4/A, wherein he had specifically mentioned that the alleged thumb impression present on the agreement (Ex.P1) tallies with the standard thumb impression of the appellant-defendant, though he had denied the execution of the agreement, alleging the same to be forged and bogus document. Though the very execution of the agreement was denied by the appellant-defendant, but evidence available on record led to a conclusion that he (defendant) was never ready and willing to perform his part of the contract and the suit for

specific performance would have been decreed, but considering the fact that he was co-sharer in the land in dispute, the courts below have rightly decreed the suit for refund of earnest money along with interest.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere in the present regular second appeal which is based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

03.05.2017
sanjeev

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