

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2824 of 2017 (O&M)

Date of Decision: 28.07.2017

Veena Kumari and another

... Appellants

Versus

Ayudhya Nath Goel and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Manhas, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

CM No.7000-Cof 2017

Delay of 7 days in filing the present appeal is marginal and is condoned which occurred due to wrong belief of the appellants that limitation for filing appeal would start from the date of receiving the certified copy of the judgment in appeal. The error in calculating limitation is bona fide.

The application stands disposed of.

CM No.6990-C of 2017

A delay of 357 days in re-filing the appeal occurred in the office of the counsel due to misplacing of the original file which had been returned by the Registry with objections and for the reason stated in para.2 of the application, the delay is condoned.

The application stands disposed of.

Main Case

1. Veena Kumari and Suman filed a suit for possession by way of specific performance of an agreement of sale of immovable suit property dated September 08, 2006 and in the alternative for refund of money claiming recovery of earnest money and damages as also the prayer for permanent injunction restraining defendants from alienating the suit property pending litigation being a 10 Marla residential house as described in the head note to the plaint situated in Village Kuthiali, Tehsil Pathankot, District Gurdaspur for a consideration of ₹7 lakh.

2. The plaintiffs succeeded before the trial Court but the decision has been reversed by the learned District Judge, Pathankot against which the plaintiffs have approached this Court in second appeal.

3. The making of the agreement of sale Ex.P-2 and the endorsement by defendant No.2 late Ajit Singh on behalf of defendant No.1 became a hotly disputed event with defendant No.1 the owner of the property, allegedly making sale through his power of attorney holder defendant No.2 to third party. The owner of the property, the alleged vendor, denied the legal existence of the contract of sale of property i.e. the agreement to sell.

4. The attesting witnesses of the agreement of sale were PW-1 Amarjit Singh Numberdar, PW-2 Sat Pal and PW-5 Chain Singh Kanwar, Advocate who is said to have scribed the instrument.

5. The learned District Judge, Pathankot rejected the examination-in-chief of PW-2 Sat Pal as he was not produced by the plaintiffs in Court for cross-examination and, therefore, his examination-in-chief had no

evidentiary value. Sat pal was put out of the picture of legal evidence.

6. So far as the Advocate Chain Singh Kanwar is concerned he appeared in the witness box and deposed that the agreement was scribed by him at the instance of the General Power of Attorney holder Ajit Singh and its execution was done in his presence and the earnest money was received from the plaintiffs. While facing cross-examination he admitted that none of the parties were personally known to him. The learned District Judge held that the statement of PW-5 Chain Singh Kanwar was not sufficient evidence to prove due execution of the document by the power of attorney holder and, therefore, it cannot be said with any certainty that Ajit Singh was actually the person who executed the sale agreement. The Court read his cross-examination only to discard his evidence since the witness testified on oath that no sale consideration was passed in his presence. Once the execution of the agreement was specifically denied by the owner defendant No.1 then the oral deposition had no evidentiary value which could be safely relied upon.

7. Next in the witness box was PW-1 Amarjit Singh Numberdar an outsider produced by the plaintiffs as their witness who though deposed that the agreement was executed by POA holder-defendant No.2 in his presence and in the presence of other attesting witnesses but when he suffered cross-examination the District Judge had observed from his statement that in its material part demolished the entire stand of having seen late Ajit Singh executing such document in favour of the plaintiffs as attorney on behalf of the owner of suit property i.e. defendant No.1. He made a statement during cross-examination that the agreement was read over and explained to owner defendant No.1 Ayudhaya Nath who had signed the agreement admitting his

contents as correct. He deposed that Ayudhaya Nath signed at places marked D, E, F, H on the agreement Ex.P-2 whereas the signatures are shown to be of his power of attorney. The witness deposed that at the time of execution it is he (PW-1), owner Ayudhaya Nath and Sat Pal who were present. Sat Pal's statement was accordingly discarded and there is no corroboration of the facts in issue. This statement was relied upon by the trial Court and the learned District Judge has re-appreciated evidence and reached the conclusion that the trial Court wrongly attached weight to the statement for proving due execution of the agreement by the power of attorney holder defendant No.2 on behalf of defendant No.1.

8. Besides, a handwriting expert was not called by the parties to prove signatures. The learned District Judge was conscious that Court on its own is not supposed to return findings about the identity of the signatures of the executant by comparing disputed signatures with standard signatures but still the Court was obliged to compare signatures on its own and in this the learned District Judge committed no error in his search of truth. He had sufficient reasons to enter upon this territory. He found from the statement of PW-1 and admission that power of attorney Ex.D-1 executed by owner Ayudhaya Nath in favour of late Ajit Singh bears the signatures of Ajit Singh at points A, B and C. When asked to speak on the difference between the signatures of late Ajit Singh on the power of attorney Ex.D-1 and why they are different from his signatures in the agreement of sale he could make no answer. This is how the Court compared the signatures with the standard signatures of late Ajit Singh with the disputed signatures on the agreement of sale and the extension of time document and found that they were totally

different in shape and structure that even a lay man can form such opinion by a cursory ocular examination of the signatures on these two vital documents. This was a material fact which has clouded the transaction in the view of the learned District Judge to such an extent, that it would be difficult to uphold the genuineness of the document and base a decree of specific performance and compel performance by execution of sale deed. It was no proof of execution of document. On the other hand, the learned trial Court had fallen into a grave error to honour the agreement of sale as a sacred document. That is why the learned District Judge held the same to be unbelievable and untrustworthy evidence which could not have been relied upon to conclude a case in favour of the plaintiffs and, therefore, justifiably reversed the finding of the trial Court.

9. The learned first appellate Court re-appreciated the statements of PW-3 Ranbir Kumar husband of plaintiff No.2 Suman, and the statement of PW-4 Veena Kumari. He found that Suman did not step into the witness box and deposed through her husband of whom the learned District Judge observed was the most interested witness for the success of the suit and, therefore, the Court had to be guarded to take into consideration his deposition and the same cannot be believed to be truthful without corroboration by other unimpeachable evidence. There was another reason for discarding the testimony of PW-3 Ranbir Kumar regarding execution of agreement by owner defendant No.1 when both PW-3 and PW-4 contradicted each other in material particulars regarding the place of execution of the agreement of sale and payment of second installment of ₹50,000/- as earnest money to late Ajit Singh presently represented through

LRs. He deposed that money was paid to late Ajit Singh in his presence in the house of the owner-defendant No.1 whereas Veena Kumari contradicted him and deposed that it was paid in Tehsil Compound. Such evidence of interested witnesses did not inspire credibility and it is unlikely that the events took place at all as asserted. If money changed hands in the presence of defendant No.1 then the learned District Judge was perfectly right in analyzing that there would hardly be any reason for the plaintiffs not to have obtained acknowledgement of Ayudhaya Nath on the extension endorsement. This was logical reasoning. Ranbir Kumar admitted that he did not receive the signatures of the owner on the receipt. This was also additional reason to disbelieve version of payment of money under the agreement to sell.

10. The learned District Judge even went into the financial capacity of the plaintiffs to pay earnest money of ₹2.5 lakh and whether they had sufficient funds in their bank accounts on the relevant date i.e. September 08, 2006. If both the plaintiffs had separate bank accounts then record was not summoned from the bank regarding withdrawal of money which primary evidence, if any, was withheld. This material evidence, the Court concluded, has been suppressed by the plaintiffs and, therefore, the learned District Judge was correct in drawing an adverse inference against the plaintiffs on this score. Ranbir Kumar admitted that both plaintiffs are house wives. They have no personal source of income. Suman was unemployed. Her husband is also unemployed. Only Ranbir Singh was in service. Source of funds and withdrawal of money by way of bank statement was not produced. The trial Court had therefore erred in missing this valid point and it fell in serious

error in not perceiving the discrepancies in the evidence, as thrashed out by the learned District Judge, and there was no discussion on the point by the trial Court in its judgment on such a vital issue.

11. The learned District Judge also went into the question whether late Ajit Singh was competent to enter into an agreement of sale of the suit property of Ayudhaya Nath defendant No.1 on the basis of power of attorney Ex.D-1. The learned District Judge read the power of attorney and found that it contained no recital as to power of sale delegated to late Ajit Singh and, therefore, could he not legally enter upon a sale transaction without the approving hand of the owner defendant No.1. This aspect was not touched by the trial Court and was extremely material to throw out the suit lock stock and barrel and in reaching the conclusion the first appellate court drew support from a number of decisions of this Court to arrive at a proper finding that the agreement of sale did not have any binding effect upon the rights of the owner defendant No.1. It is not necessary to deal with the case law only to add length to the present order. In the main, the execution of agreement to sale was not proved by production of legal evidence of probative value inspiring faith. For all these reasons, the learned District Judge, Pathankot by his judgment and decree dated July 23, 2015 has allowed the appeal and dismissed the suit.

12. None can have any quarrel with the reasoning of the learned District Judge on all the aspects touched upon and elaborately discussed in his judgment in appeal and I have not a shadow of doubt that the judgment in appeal is not open to interference and suffers from no legal or factual infirmity.

13. Accordingly, I uphold the judgment in appeal and commend the dismissal of the present appeal. No question of law, much less substantial in terms of Section 100 of the CPC or Section 41 of the Punjab Courts Act, 1918 is involved in this case or as are framed in the grounds of appeal for and further consideration and the appeal is not required to be admitted.

14. The appeal is dismissed at the threshold with court fee affixed in appeal forfeited to State.

(RAJIV NARAIN RAINA)
JUDGE

28.07.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>