

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

RSA No.3035 of 2017 (O&M)

Date of decision : 05.12.2017

Saroj Rani and others

...Appellants

Versus

Gurjeet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for specific performance of the agreement to sell dated 14.08.2007 executed by the defendants in favour of the plaintiffs with respect to the land measuring 16 kanals being 1/4th share of land measuring 64 kanals.

The execution of the agreement to sell and receipt of earnest money is not being disputed by the defendants.

The defendants had taken a plea that in fact on 15.12.2007 i.e. the target date for execution and registration of the sale deed, the date was extended for one week. However, it was got typed as 25.12.2008.

Since on the extended target date, the defendants did not come forward for the execution of the sale deed, the plaintiffs got their presence

marked on 24.12.2008 before the office of Sub-Registrar as 25.12.2008 was holiday.

In the written statement, the defendants pleaded that they were required to sell the property on account of marriage of their daughter and, therefore, the agreement to sell cannot now be specifically performed.

Both the Courts below have after appreciating the evidence available on the file decreed the suit filed by the plaintiffs.

I have heard the learned counsel for the appellants and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellants has submitted that the plaintiffs had wrongly pleaded that in fact the land was mortgaged and, therefore, the date for execution and registration of the sale deed was extended. He has submitted that the learned First Appellate Court has found that the plea taken by the plaintiffs was factually incorrect.

I have considered the submission. The total land of the khewat was 64 kanals. The defendants were owner of the land measuring 16 kanals i.e. 1/4th share in total land measuring 64 kanals. In the jamabandi, the land of other co-owners was shown to be under mortgage. The First Appellate Court has noticed this fact and had held that some part of this joint khata was under mortgage.

Still further, the endorsement dated 15.12.2007 is signed by all the four defendants. The defendants are not disputing their signatures on the endorsement. Once the date had been extended for whatever reason, the defendants cannot turn around and refused to perform the agreement to sell

on the ground that since their daughter had already been married, therefore, now there is no need of money.

Next argument of the learned counsel is that the suit was filed after a period of one year from the target extended date.

As per the Limitation Act, the limitation for filing the suit is three years. In the present case, the suit was filed on 04.12.2009 whereas as per the extended agreed date, the sale deed was to be registered on 25.12.2008. Taking into consideration these facts, it cannot be said that the suit was belated or was barred by limitation.

Last argument of the learned counsel is that the plaintiffs failed to prove their capacity to pay the amount. They have failed to lead any evidence to prove that they were having resources to pay the balance amount.

Learned First Appellate Court has examined this issue. Learned First Appellate Court has relied upon the bank accounts statement Ex.PW4/B, wherein total credit balance shown in the account of plaintiffs is ₹56,80,257/- as on 19.12.2008. In these circumstances, it cannot be said that the plaintiffs did not had enough resources to execute the sale deed. Still further, it is the plaintiffs who went to the office of the Sub-Registrar on 24.12.2008 to get the sale deed registered. The plaintiffs filed a suit within a period of one year of the target date i.e. the date for execution of the sale deed. The plaintiffs have specifically pleaded in the plaint that they were always ready and willing to perform their part of the contract. The plaintiffs further while appearing in the witness-box reiterated this fact. Both the Courts have found that the plaintiffs were ready and willing to perform their

part of the contract which is not shown to be erroneous.

For the reasons given above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

05.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No