

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

**R.S.A No. 6222-2014 (O&M)
Date of decision : 07.09.2017**

Raj Kumar ...Appellant

versus

Ram Chand & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Animesh Sharma, Advocate
for the appellant

Mr. Sherry K. Singla, Advocate
for the respondents.

RITU BAHRI, J.

Defendant-appellant (herein after to be referred as 'the appellant') has come up in regular second appeal against the concurrent findings of facts recorded by both the Courts below whereby the suit of the appellant has been dismissed.

A bare perusal of the judgments shows that the respondents filed a suit for possession by way of specific performance of agreement to sell dated 02.06.2006, executed by appellant in respect of the land mentioned in the plaint claiming therein that appellant is the owner of the property in question to the extent of 1/3rd share and agreed to sell his share/land measuring 08 bigha 15 biswas out of the land measuring 41 bigha 16 biswas, owned by the appellant, with all rights to the respondents for an amount of Rs.18,00,000/- vide agreement to sell dated 02.06.2006.

The appellant received an amount of Rs.14,00,000/- as earnest money in the presence of the witnesses and after admitting the correctness of the agreement to sell and had signed in lieu of receiving earnest amount of Rs.14,00,000/- out of Rs.18,00,000/- in the presence of the witnesses. The sale deed was to be executed on 10.06.2007 on the receipt of balance sale consideration. The respondents approached the appellant on 31.05.2007 as respondent No. 1 has sent a notice through UPC in which the appellant was called upon to execute the sale deed on 08.06.2007 because on 10.06.2007 it was holiday. On 08.06.2007, respondents were present along with balance sale consideration and expenses before the Sub Registrar, Patiala but the appellant did not come for purchase of stamp papers and for execution of the sale deed. On 11.06.2007 also, respondents were present along with balance sale consideration and expenses before the Sub Registrar, Patiala but the appellant did not come present. The respondents requested the appellant to execute the sale deed but he did not give any satisfactory reply.

Learned counsel for the appellant has vehemently argued that the appellant was not given an appropriate and proper opportunity to lead his evidence and he should not be made to suffer for the fault on the part of his counsel before the learned trial Court. After filing of the written statement, the counsel for the appellant assured him that he would inform him whenever required or when the case would be fixed for evidence of the appellant but he did not inform him when the case was fixed for evidence of the appellant.

Reference at this stage can be made to C.R. No. 5649-2013

filed by the appellant for setting aside impugned order whereby his application for under Section 5 of the Limitation Act for condonation of delay of 180 days in filing of the appeal was dismissed. This Court allowed the revision petition of the petitioner-appellant and restored the appeal to its original number, subject to costs of Rs.20,000/- and the lower Appellate Court was directed to decide the appeal on merit in accordance with law.

Thus, now learned counsel for the appellant cannot take a plea that the appellant was not given an appropriate and proper opportunity to lead his evidence, as the respondents have led sufficient evidence to show that an agreement to sell was executed between the parties and accordingly, the suit of the respondents has been decreed. The appellant has never denied his signatures on the agreement and he took a plea that those were appended as a security of the loan of Rs.7 lacs which was taken by him from the respondent No. 1 and papers had been misused. However, no evidence was led by the appellant to support this contention. The appellant did not appear even in the witness box despite availing eight opportunities. On the other hand, respondents have duly proved the execution of agreement to sell, through the testimony of attesting witness and the documents brought on record. The readiness and willingness of the respondents to get the sale deed executed, is also evident from the fact that the respondents remained present in the office of Sub Registrar along with balance sale consideration.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this

Court.

The appeal is dismissed.

07.09.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No