

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3388 of 2017 (O&M)
Date of Order:25.07.2017

Chandan Singh

..Appellant

Versus

Balbir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Savita Rana, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.8611-C of 2017

Allowed as prayed for.

Photocopy of the agreement to sell, Annexure P-1, is taken on
record.

C.M.No.8173-C of 2017

Prayer in this application is for condonation of delay of 136
days in re-filing the appeal.

For the reasons stated in the application, which is supported by
the affidavit, the application is allowed and delay of 136 days in re-filing
the appeal is condoned.

RSA No.3388 of 2017

Defendant-appellant has filed regular second appeal against
judgment and decree, dated 07.08.2015, passed by the Additional Civil
Judge(Sr. Division), Naraingarh, confirmed in appeal by the first appellate
Court.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 23.01.2008. Plaintiff claimed that defendant had entered into an agreement to sell with respect to 35 kanals being half share of 70 kanals of land described in the plaint for a total sale consideration of Rs.20 lacs.

According to the plaintiff, the entire sale consideration was received. It has further mentioned that a dispute with respect to inheritance of "Siria" is pending in the High Court and defendant will inform the plaintiff about the decision of the said appeal through the registered post and thereafter the plaintiff will get the sale deed executed within a period of two months.

Defendants appeared and denied execution of the agreement to sell. It was claimed that the agreement to sell is illegal, null and void. Defendants also took a plea that he was wanting to authorise plaintiff to take care of the litigation. However, he has forged and fabricated the agreement to sell.

Learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. Appeal filed by the defendant was also dismissed with a detailed judgment.

Counsel for the appellant has challenged the findings of the courts below on following grounds:-(i) the agreement is vague as description of the land is not identified by khasra numbers; (ii) the agreement to sell is dependent upon an uncertain event and, therefore, the agreement to sell is void; (iii) the agreement to sell is not registered, therefore, it cannot be enforced.

I have considered the arguments addressed by counsel for the

appellant and with her able assistance gone through the judgments and decrees of the courts below.

First argument of learned counsel for the appellant is that the agreement is vague and it is not identified by khasra numbers. In this respect, I had requested the learned counsel to establish from record that defendant was owner of any other piece of land. The answer of learned counsel is that the defendant-appellant is not the owner of any other land in the village. If the defendant was only owner of 35 kanals land in village Gobindpura and he had entered into an agreement to sell with respect to that land only and parties to the agreement to sell were clear about the identification of land, then the argument of learned counsel for the appellant cannot be accepted. Once the defendant-appellant had only one piece of land in a particular village, then the argument that the land is not identified with khasra numbers is not available. A reading of the issues also do not establish that such issue was ever claimed by the plaintiff before the courts below.

Second argument of learned counsel for the appellant is that the agreement to sell is dependent upon future uncertain event and therefore, the agreement is void.

I have carefully gone through the agreement. The total sale consideration had been paid. Only registration of the sale deed was postponed till decision of a litigation pending in the Court. Such agreement cannot be said to be void. Defendant has admitted his signatures. Defendant has not been able to lead any evidence to prove that agreement was forged and fabricated. Agreement to sell has been proved by attesting witnesses. Plaintiff has also appeared in the witness box to support his case.

Payment of the sale consideration is proved because plaintiff produced a statement of accounts, Ex.P3 from his banker proving that Rs.20 lacs were withdrawn on 23.01.2008, the date of agreement.

Counsel for the appellant has further submitted that since agreement to sell is not registered, therefore, it is not enforceable. Agreement to sell is not required to be registered for the purpose of filing suit for specific performance. Agreement to sell is required to be registered, if the plaintiff wants to protect his possession under Section 53-A of the Transfer of Property Act. This issue has already been settled by the Hon'ble Division Bench in the judgment reported as **Ram Kishan and anothers v. Bijender Mann @ Vijender Mann and others, 2013(2)CCC, page 188.**

No other argument was pressed by counsel for the appellant.

Finding no merits in the present regular second appeal, the same is ordered to be dismissed.

July 25, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No