

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

RSA No.3516 of 2017 (O&M)

Date of Decision: 06.11.2017

Ajit Singh

.....Appellant

Vs.

Ram Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sudhir Kumar Hooda, Advocate,
for the appellant.

RITU BAHRI, J. (ORAL)

CM No.8489-C of 2017

For the reasons stated in the application, delay of 107 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

The appellant has come up in appeal against the judgment of learned appellate Court dated 16.11.2016 whereby, suit has been decreed vide order dated 13.02.2014 by the trial Court for possession by way of specific performance of contract, has been dismissed.

The plaintiff/appellant had filed a suit for possession by way of specific performance vide agreement to sale dated 15.04.2005 a plot measuring 75 Sq.yards to the plaintiff @ Rs.950/- per sq.yards, situated in the revenue estate of village Kutana Tehsil and District Rohtak, which is bounded as under:

East: 52'-6" Plots of Bahu Akbarpur

West 52'-6' Plot of Ram Kumar

North: 14' Road

South: 11'-3" Gher of Dhan Singh

The agreement to sell was executed by the defendant in the presence of witnesses. The defendant received earnest money of

Rs.25,000/- from the plaintiff on 15.04.2005 in the presence of witnesses. It was agreed that the sale deed on payment of remaining sale consideration would be executed and got registered by the defendant in favour of the plaintiff as and when the plaintiff will ask for the same. The plaintiff received the another amount of Rs.10,000/- from the plaintiff on 12.07.2005 and an entry to this effect was made on the agreement to sell dated 15.04.2005. The plaintiff requested the defendant to execute the sale deed and get the same registered but the defendant avoided the same on one pretext or the other and as such the plaintiff got served a legal notice dated 28.01.2006 on the defendant calling upon him to come to the office of Sub Registrar Rohtak on 14.02.2006. Despite this, the defendant did not turn up to the office as mentioned above to perform his part of contract. Another notice dated 18.12.2006 was also sent upon the defendant but to of no effect. In this way, it is clear that the defendant has failed to perform his part of contract. Hence, the suit was filed.

Upon notice, defendant appeared and filed his written statement wherein preliminary objections have been taken regarding maintainability, cause of action and locus standi and taken the plea that he never executed a agreement to sell or that he sold the plot in question to the plaintiff or that the agreement was executed by the defendant in presence of witnesses. It was denied that the defendant received earnest money of Rs.25000/- from the plaintiff in the presence of witness. It was denied that the defendant received another amount of Rs.10,000/- from the plaintiff on 12.07.2005.

On the pleadings of the parties, following issues were framed:

- (1) Whether the plaintiff had always been willing and ready to execute the agreement to sell dated 15.04.2005? OPP
- (2) Whether the plaintiff is entitled to the relief of specific performance on the basis of agreement to sell dated 15.04.2005? OPP
- (3) Whether the suit is not maintainable in the present form? OPD.
- (4) Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPR
- (5) Whether the plaintiff has not come to the Court with clean

hands and has suppressed the material facts from the Court? OPR.

- (6) Whether the suit of the plaintiff is false and based on frivolous grounds? OPR.
- (7) Relief.

The trial Court has decreed the suit of the plaintiff taken into account the statement made by witness who came on the asking of plaintiff. Sh.Ashok Kumar has deposed as PW-2 that who has tendered his evidence by way of affidavit Ex.PW-2A stating that defendant Sh.Ram Kumar is his tenant and Ex.P1 agreement to sell was written by him which took place between the plaintiff Ajit Singh and Ram Kumar regarding the plot. The plaintiff has given Rs.25,000/- to the defendant in his presence. The case set up by the defendant that agreement was forged. However, he did not lead any evidence to prove Ex.P-1 was forged document. However, Rs.25,000/- were given by the defendant has also been deposed by Surender PW-3 and Ashok Kumar PW2. The plaintiff has placed Ex.P-3 and Ex.P5 the certificate of attendance of plaintiff at office of Registrar on 14.02.2006 and 19.12.2006 respectively i.e. the date agreed for enforcement of agreement Ex.P-1 when defendant failed to appear. Defendant has not placed on record his attendance certificate to counter Ex.P-3 and Ex.P-5 duly attested by the Executive Magistrate, Rohtak. In view of the above evidence, the agreement stood executed and suit of the plaintiff was decreed.

The appellate Court in appeal has reversed the findings given by the trial Court. It has observed in paragraph 11, that the scribe oft Ex.P1 ie. Ashok Kumar PW2 in his testimony has stated that the boundaries/demarcation of the lot has nowhere been stated in Ex.P1.

It is further stated that in the agreement it was no where written that it was an agreement to sell pleaded by the defendant. This Court has already concluded that in agreement Ex.P1, the date for the execution and registration of the sale deed has nowhere been recorded. The document Mark-A of the suit property which plaintiff has placed on record in the sale deed does not show that the defendant was owner of the suit property.

Since the defendant No.1 had only half share of the total plot measuring 150 sq. yards and his share is 75 sq. yards, the defendant no.1 in his testimony has also admitted that the plot of 75 sq. yards which comes in his share is bounded as stated by the plaintiff in the plaint. The Court has already concluded that in agreement Ex.P1, the date for the execution and registration of the sale deed has nowhere been recorded and hence, it can be concluded that there is force in the argument made by the counsel for the defendant that defendant never agreed to execute the sale deed in favour of plaintiff either on 14.02.2006 or on 19.12.2006, as has been stated by the plaintiff in his legal notice Ex.P2 and Ex.P4. Therefore, the presence of plaintiff in the office of Sub-Registrar on 14.02.2006 Ex.P3 and 19.12.2006 Ex.P4 is of no consequence.

A perusal of the judgment passed by learned appellate Court further clarifies that agreement to sell Ex.P1, which has been proved by Ashok Kumar PW2 has admitted that it is nowhere written that it is an agreement to sell. The Ex.P1 states that on 15.04.2005, plaintiffs, had an agreement with the defendant with regard to a plot measuring 75 sq.yards @ Rs.950/- per sq.yards and an earnest money of Rs.25,000/- was also received by the defendant. The Ex.P1 nowhere states that the agreement referred in it was an agreement to sell the plot by the defendant. Since the date of execution and for the registration of the sale deed has been stated in Ex.P1, therefore, Ex.P1 cannot be deemed to be an agreement to sell as has been alleged by the plaintiffs. The document Mark-A which the plaintiff is alleging to be sale deed of the property mentioned in the plaint does not show the defendant to be the owner of the suit property. The plaintiff has not placed on record the complete sale deed i.e. document Mark-A of the suit property.

The abovesaid findings has rightly come to the conclusion that the plaintiff has also failed to prove that it was ever agreed by the defendant that he would execute the sale deed in favour of the plaintiff. Therefore, Ex.P1 does not create right, title or interest in the suit property in favour of the defendant.

So in the light of the discussion, the orders of the learned appellate Court do not reflect any material irregularity or perversity which warranting

interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

06.11.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No