

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

**RSA No.3744 of 2017 (O&M)
Date of Decision: July 25, 2017**

Puran Chand

... Appellant

Versus

Ram Kumar

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Hamid Hussain, Advocate,
for the Appellant.

ANIL KSHETARPAL, J.

CM 9169-C of 2017

Allowed as prayed for.

CM 9170-C of 2017

This is an application under Section 5 of the Limitation Act for condonation of delay of 43 days' in filing the present appeal. The application is supported by an affidavit.

For the reasons stated in the application, delay of 43 days' in filing the present appeal is condoned.

RSA No.3744 of 2017.

Defendant is in second appeal against the concurrent finding of fact of arrived at by the Courts below.

Plaintiff had filed a suit for possession by way of specific

performance of agreement to sell dated 18.06.2007 with respect to the land measuring 11 Canals 03 Marlas situated in Village Rampur Tehsil and District Panchkula. It was the case of the plaintiff that out of total sale consideration of Rs. 9,75,625/-, defendant received a sum of Rs.7,50,000/- as earnest money. As per the agreement to sell, target date for execution and registration of Sale Deed was 15.06.2008. Since 15.06.2008 was holiday, plaintiff attended the office of Sub Registrar on 16.06.2008. However the defendant did not turn up. Plaintiff got his presence marked. Plaintiff filed the suit on 18.08.2009.

Defendant appeared and took a ground that the agreement to sell is unregistered document, therefore not enforceable. Defendant denied receipt of earnest money. He even denied the execution of the agreement to sell. He claimed that he was an aged and illiterate person. It was further claimed that defendant used to purchase cloth for his family from the shop of plaintiff and enjoyed cordial and friendly relations. Plaintiff used to obtain thumb impressions in his diary and on some blank papers from time to time. It was further stated that plaintiff thereafter stopped his business of cloth and started running shop of commission agent. Money transaction between the plaintiff and defendant continued. Defendant even used to sell the crop through the shop of plaintiff.

Learned trial Court after appreciating the evidence available on the file, decreed the suit. The trial Court found that the agreement to sell is proved as Pardeep Kumar attesting witness has been examined, apart from plaintiff himself appearing in the witness box. Appeal filed before the first

Appellate Court was also ordered to be dismissed after reappreciating the evidence.

Learned counsel for the appellant has submitted the following points: –

(i) He had taken a loan of Rs. 1,92,000/- on the land and total repayment due was Rs.3,00,000/-. Therefore, there was no necessity of entering into an agreement to sell for Rs.9,75,625/-.

(ii) Agreement to sell is the result of fabrication.

(iii) Once the plaintiff had denied execution of agreement to sell, it was the duty of the plaintiff to examine the Handwriting and Fingerprint Expert to compare the thumb impression of the defendant on the agreement to sell.

(iv) Stamp Vendor from whom the stamp paper for execution of the agreement to sell was purchased has stated that signatures of the defendant are in English whereas defendant is an illiterate person.

I have considered the submissions of learned counsel for the appellant.

Decision to sell the property is personal to an individual. Whether one person would like to sell the property when he is to pay only Rs.3,00,000/- or not also depends on various circumstances. Here is a case where agreement to sell is in writing. It is duly thumb marked. Thumb mark is on the revenue stamp. It is the case of the defendant himself that the

property was under a charge and loan was to be repaid. Therefore, there is no force in the first submission of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that the agreement to sell is the result of fabrication. He submits that blank papers have been converted into an agreement to sell. I have examined the photocopy of the agreement to sell produced by learned counsel for the appellant. Agreement to sell is on a stamp paper. The stamp paper has been purchased for the purpose of execution of agreement to sell. Defendant has put his thumb impressions down below on the revenue stamp. Defendant has not been able to produce any evidence to prove that the agreement is fabricated. Therefore, the submission of learned counsel for the appellant cannot be accepted that the agreement is fabricated.

Learned counsel for the appellant has further submitted that once execution of the agreement was denied by the defendant – appellant, therefore, it was incumbent on the plaintiff to get the thumb impressions compared from fingerprint expert.

In this case, plaintiff himself has appeared in the witness box and stated that defendant did put itself thumb impressions in his presence. Attesting witnesses to the agreement to sell Pardeep Kumar and Manoj Kumar have been examined as PW2 and PW3. Both have been cross-examined by the Counsel for the defendant.

Still further, defendant had, in fact, admitted his thumb impressions and had pleaded that thumb impressions were taken on the blank papers. Therefore, the thumb impressions on the agreement to sell are

not in dispute. The opinion of the fingerprint expert is not binding on the Court. Such evidence is not conclusive. Once direct evidence was available and plaintiff had led direct evidence, it was not incumbent on the plaintiff to necessarily examine fingerprint experts.

Lastly, learned counsel for the appellant has submitted that the Stamp Vendor had stated that signatures of the defendant are in English. I have seen the photocopy of the register of the Stamp Vendor as produced by the learned counsel for the appellant during the course of arguments. Stamp paper is not stated to have been purchased by the defendant. It has come in evidence that the stamp paper was purchased by someone else. Therefore, the argument of learned counsel for the appellant that the defendant is an illiterate person and register of the stamp vendor bears his signatures in English, therefore, the purchase of stamp paper is doubtful. It is not necessary that the executant of the agreement to sell must necessarily purchase the stamp paper. The stamp paper has been purchased for execution of the agreement to sell. The stamp paper is issued in the name of defendant. Therefore, there is no force in the argument of learned counsel for the appellant.

Taking into consideration the facts and circumstances of the case and in view of the discussion made above, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below. Counsel for the appellant has not been able to point out any substantial question of law involved in the present case. Counsel for the appellant has also not been able to point out any ground which may fall within the scope

of Section 41 of the Punjab Courts Act, 1918, allowing interference in the Regular Second Appeal.

In view of the above, the present appeal is ordered to be dismissed.

25.07.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No