

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

RSA No.3880 of 2017 (O&M)

Date of Decision: August 23, 2017

Balraj Singh Th. LRs Gurbir Singh & Ors.

... Appellants

Versus

Surlekh Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Gagandeep Singh Virk, Advocate
for the Appellants.

Mr. Puneet Bali, Sr. Advocate with
Mr. S.S. Bains and
Mr. Ranjit Saini, Advocates
for the caveator/respondent.

ANIL KSHETARPAL, J.

CM No.9735-C of 2017

This is an application under order 22 rule 3 CPC for bringing on record legal heirs of appellant No.1 –Balraj Singh, who died on 27.01.2017. The application is supported by an affidavit.

The application is allowed subject to all just exceptions. The legal heirs mentioned in para 2 of the application, who are natural heirs, are permitted to be brought on record for the purpose of prosecuting the present appeal only.

RSA No.3880 of 2017

Defendants are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for specific performance of the agreement to sell dated 23.06.2005 for a total consideration of Rs.1,28,25,000/-. The execution of the agreement to sell is admitted between the parties. It is an admitted fact that Rs.10,00,000/- was paid as earnest money.

As per the agreement to sell, the target date for execution and registration of the sale deed was fixed on or before 07.10.2005. Clause 6 of the agreement to sell reads as under: –

“That if the No Objection Certificate is not granted to the seller/s by the Estate Officer, Chandigarh Administration, Chandigarh due to any reason before the date fixed for final payment/execution of Sale Deed then the seller/s will has/have to extend the date as mutually agreed by both the parties.”

Plaintiff has asserted that out of the total sale consideration of Rs.1,28,25,000/-, plaintiff on different dates had paid a sum of Rs.1 Crore.

Defendants in the written statement admitted execution of the agreement to sell. Defendants also admitted that an amount of Rs.65,00,000/- has been paid. However, payment of Rs.35,00,000/- was disputed.

Defendants pleaded that on the target date, plaintiff did not turn up and, therefore, the amount stands forfeited.

The learned trial Court after examining the evidence available on the file, recorded a finding that in fact Rs.35,00,000/- was also received

by the defendants. The learned trial Court recorded that plaintiff was always ready and willing to perform his part of the contract. The suit filed by the plaintiff was decreed on payment of balance sale consideration.

First appeal preferred by the defendants has also been ordered to be dismissed after reappreciating the evidence available on the file.

Learned counsel for the appellants has submitted that the suit filed by the plaintiff suffered from delay and laches and, therefore, the Courts below were not correct in granting discretionary relief of specific performance to the plaintiff. He has further submitted that there is no evidence of plaintiff being ready and willing to perform his part of the contract. He further submitted that the Courts have overlooked the forgery committed by the plaintiff on the endorsements dated 8.11.2005 when Rs.35,00,000/- is alleged to have been paid. He has further submitted that the Courts have not recorded any finding that Rs.35,00,000/- was paid by the plaintiff to the defendants.

On the other hand, learned counsel for the respondent has submitted that the findings arrived at by the Courts below are correct. The plaintiff was always ready and willing to perform his part of the contract. He has further submitted that almost 80% of the payment has been made. He has further submitted that No Objection Certificate from the Chandigarh Administration was duly applied by the defendants-appellants and had been granted.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgements passed by the Courts

below as well as the record produced by the counsel for the parties.

Receipt of Rs.65,00,000/- is an admitted fact. The only dispute is with respect to the endorsement dated 08.11.2005. There are two endorsements of 08.11.2005. The first endorsement is Ex. P1/4 wherein both the defendants had put their signatures as the property belonged to both the brothers. Thereafter, there is a further endorsement of 08.11.2005, which is again signed by the defendants when the date for execution of sale deed was extended to 14.11. 2005, which is Ex. P1/5. Defendants-appellants admitted signing of subsequent endorsement dated 08.11.2005, however, they dispute the endorsement which acknowledges payment of Rs.35,00,000/-.

None of the defendants has appeared in the witness box. Defendants were the best persons to appear in the Court in evidence to admit or deny the first endorsement dated 08.11. 2005. It is further not in dispute that the plaintiff deposited Rs.4, 50,250/- with the Estate Office, Chandigarh Administration for getting No Objection Certificate.

The first submission of learned counsel for the appellants is that the suit suffered from delay and latches as it was filed on the last date of limitation. He submits, therefore, the discretionary relief of specific performance of the agreement to sell should not have been granted.

I have considered the submission, however, I am unable to agree. The Limitation Act provides limitation of three years for filing a suit for specific performance from the date fixed for execution and registration of the sale deed. The suit was filed within the period of 3 years. In this case,

the plaintiff had paid almost 80% of the amount in installments. It was agreed between the parties that if the No Objection Certificate is not granted to the seller by the Estate Officer, Chandigarh Administration, the date fixed for execution of the sale deed would have to be extended. Still further, endorsement dated 08.11.2005, which is admitted by the appellants, shows that the date was extended on the request of the seller i.e. appellants. The Endorsement reads as under: –

“On the request of the seller the last date of full and final payment of Plot No.1513, Sector 40-B, measuring 528.13 sq. yds. has been extended upto 14th Nov., 2005. Other terms and conditions are same as per Agreement to Sell dated 23.06.2005.”

Still further, plaintiff deposited Rs. 4,50,250/- with the Estate Officer, Chandigarh Administration on 18.10.2005.

Learned counsel for the appellants very fairly admitted that the plaintiff had not taken this plea before the Courts below. Neither any issue was sought nor such argument was taken before the Courts below.

For the reasons given above, I do not find any force in the argument of the learned counsel for the appellants.

Second submission of the learned counsel for the appellants is that the appellants were not ready and willing to perform their part of the contract.

I have examined the records. The plaintiff had paid Rs.1 Crore out of a total consideration of rupees Rs.1,28,25,000/-. The extension of

time on 08.11.2005 was at the behest of the seller. The plaintiff even visited the office of the Sub Registrar and got attested an affidavit to prove that he was present in the office of the Sub Registrar and ready to execute the sale deed. In these facts and circumstances, the plaintiff has successfully established that he was ready and willing to perform his part of the contract.

The next submission of the learned counsel for the appellants is that Courts have overlooked the forgery committed by the plaintiff while creating the receipt of Rs.35,00,000/-.

I have carefully considered the submission. Both the Courts below have recorded a finding of fact that defendants had received Rs.35,00,000/- and executed endorsement. The Courts have also noticed the opinion given by the fingerprint expert. The Courts have also noticed that the defendants have not stepped into the witness box and faced cross-examination, which would have given opportunity to the plaintiff to cross-examine the witness and material to the Court to arrive at a conclusion. Still further, the execution of endorsement of the same date i.e. 08.11.2005 is admitted by the defendants. Cumulatively, I do not find that there is any forgery in the agreement to sell.

The last submission of the learned counsel for the appellants is that the Courts below have not recorded any finding of fact to prove that Rs.35,00,000/- was paid. The entire dispute between the parties was with regard to the payment of Rs.35,00,000/-. Both the Courts devoted substantial part of the judgement on this aspect of the matter and recorded that payment of Rs.35,00,000/- is proved. Therefore, there is no force in the

submission of the learned counsel for the appellants.

Learned counsel for the appellants has further read out to me the statement of the property dealer Ram Sarup Leekha PW1. Ram Sarup Leekha has, no doubt, given evidence, which is not in consonance with the facts pleaded in the plaint. However, later on, plaintiff examined Gaurav Leekha (son of Ram Sarup Leekha), who had produced on file the medical record to show that Ram Sarup Leekha, in fact, suffered from dementia.

In view of the medical record produced, the appellants cannot take benefit of the statement of Ram Sarup Leekha.

In view of what has been discussed above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below. The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

23.08.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No