

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

**RSA No.3955 of 2017 (O&M)
Date of Decision: 16.08.2017**

Bhupinder Singh

... Appellant

Versus

Narinder Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kanwal Goyal, Advocate,
for the appellant.

Mr. Ghulam Nabi Malik, Advocate
for the Caveator.

ANIL KSHETARPAL, J. (ORAL).

Defendant No.1 is the appellant in this Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for recovery of Rs.14,40,000/- paid to defendant No.1 as per agreement dated 03.02.2006 and writing dated 17.04.2006. It was pleaded by the plaintiff that the defendant No.1 was having an agreement to sell in his favour from defendant No.2- Devinder Singh and on the basis thereof, plaintiff had agreed to purchase the land measuring 26 Kanal 17-3/4 Marla.

Originally the suit land was owned by Mohan Singh-defendant No.3. He had entered into an agreement with Devinder Singh. Devinder Singh in turn had entered into an agreement with Bhupinder Singh. Bhupinder Singh on the basis of the agreement to sell, in his favour by

Devinder Singh, entered into a further agreement with plaintiff i.e. Narinder Singh. Since Bhupinder Singh did not get the sale deed executed in his favour, therefore, the plaintiff filed a suit for recovery of Rs.14,40,000/-. Defendant No.1 appeared and filed written statement but thereafter, was proceeded against ex parte.

The learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff ordering the recovery of Rs.14,40,000/- along with interest. First appeal preferred by defendant No.1 was also dismissed after reappreciating the evidence available on the file.

I have heard the learned counsel for the appellant as well as learned counsel for the caveator and with their able assistance, gone through the judgements passed by the Courts below.

Learned counsel for the appellant has submitted that the suit filed by the plaintiff was barred by limitation as the date for execution and registration of the sale deed was 10.05.2006. He further submits that the endorsement of extension dated 17.04.2006 is surrounded by suspicious circumstances and the execution of such document is not proved on the file. Hence, he submits that taking the target date to be starting point 10.05.2006, the suit filed on 23.05.2009 was barred by time.

Learned counsel for the appellant has further submitted that the plaintiff could only file a suit for specific performance of the agreement and not for recovery of the amount only. Learned counsel for the appellant has further submitted that the plaintiff had also entered into an agreement to sell further with one Gurmukh Singh. He submits that Narinder Singh has

received Rs.6 Lacs under the agreement and this amount should be adjusted.

I have considered the submission of learned counsel for the appellant, however, I am unable to agree.

There is a writing/endorsement dated 17.04.2006, which is Ex. P-2 on the file written on the back page of the agreement to sell, duly signed by defendant No.1/appellant Bhupinder Singh. Additional amount of Rs.40,000/- was received by Bhupinder Singh. The aforesaid writing is attested by two witnesses. Defendant No.1/appellant has not appeared in the witness box. In these circumstances, the Courts have rightly drawn adverse inference against the appellant.

In view of the writing Ex. P-2 dated 17.04.2006, the date for execution of the sale deed was extended to 26.05.2006. In these circumstances, the suit filed by the plaintiff is within limitation.

Learned counsel for the appellant has further submitted that the plaintiff could only file a suit for specific performance of the agreement to sell and the plaintiff was not entitled to file suit for recovery of earnest money.

I have considered the submission, however, I am not able to agree with the aforesaid submission. It is admitted position on the record that till date Bhupinder Singh is not the owner of the property. Once Bhupinder Singh has not acquired title, Narinder Singh could not file a suit for specific performance. In these circumstances, the only option available to the plaintiff was to seek recovery of the amount paid.

Learned counsel for the appellant has further submitted that

Narinder Singh had entered into an agreement to sell with Gurmukh Singh and received Rs.6 Lacs. The aforesaid transaction is between Narinder Singh and Gurmukh Singh. Gurmukh Singh is not party in the present litigation. In the present case, the dispute is between the plaintiff-Narinder Singh and Bhupinder Singh. Narinder Singh had paid a sum of Rs.14,40,000/- to Bhupinder Singh. Plaintiff is entitled to recover the aforesaid amount. Agreement between Narinder Singh and Gurmukh Singh would not absolve the appellant of the responsibility to refund the amount received.

Taking into consideration the concurrent finding of fact, I do not find any ground to interfere with the judgements passed by the Courts below. The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

16.08.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No