

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

**RSA No.4990 of 2017 (O&M)
Date of Decision: 27.10.2017**

Jarnail Singh

... Appellant

Versus

Avtar Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Punia, Sr. Advocate, with
Ms. Harveen Kaur, Advocate
for the Appellant.

ANIL KSHETARPAL, J. (ORAL).

The defendant/appellant is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 11.07.2008. As per the agreement, total sale consideration was Rs.7,00,000/- out of which Rs.6,00,000/- were paid as earnest money.

The sale deed was to be executed and registered on 15.10.2009. The date was extended by executing a writing on the back of the first page duly signed by the parties and fresh date was fixed as 05.05.2010. The plaintiff visited the office of the Sub Registrar for execution of the sale deed. However, the defendant did not come forward for completion of the contract. The plaintiff marked his presence. He filed a suit for specific performance on 04.10.2010. It was pleaded that the plaintiff was always

ready and willing to perform his part of the contract.

The defendant denied execution of the agreement. He denied all the assertions made in the plaint. It was pleaded by the defendant that in fact he and his brother had some dispute and the plaintiff had intervened and got the matter settled. In that dispute inter se the brothers, a compromise was recorded and the defendant was asked to sign the compromise. It is pleaded that on that pretext signatures were taken.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

Learned counsel for the appellant has submitted three arguments. (1) The suit was filed after the delay and, therefore, it must be assumed that the agreement to sell was not intended to be acted upon because the date for execution of the sale deed initially was fixed after a period of one year which was later on extended by another seven months. (2) Bahadur Singh, one of the attesting witnesses has stated in his evidence that Scribe Balbir Singh, who has drafted the agreement to sell, used to obtain signatures from the parties. (3) Learned counsel has further submitted that Bahadur Singh, attesting witness has stated before the Court that no payment was made in his presence.

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

It may be noticed here that none of the contentions were raised before the Courts below. Before the trial Court, the defendant had totally denied execution of the agreement. In any case, let us deal with the

arguments one by one.

1. The suit was filed after the delay and, therefore, it must be assumed that the agreement to sell was not intended to be acted upon because the date for execution of the sale deed initially was fixed after a period of one year which was later on extended by another seven months.

In the present case, the agreement to sell is dated 11.07.2008. Out of the total sale consideration of Rs.7,00,000/-, Rs.6,00,000/- have been paid. The agreement to sell is a contract between the parties. It is all depend upon the terms agreed. The agreement to sell runs into three pages. Each page has been signed by the defendant. Even the endorsement to purchase the stamp papers is also signed by the defendant. Defendant has further signed the endorsement extending the date of execution of the sale deed. In this endorsement also, receipt of Rs.6,00,000/- has been acknowledged. The plaintiff filed the suit within a period of four months after the extended date to execute sale deed. Therefore, it will not be correct to conclude that the agreement to sell was not intended to be acted upon. The agreement to sell is a written document. The intention of the parties is to be seen from the writing of the document. The document clearly provides that the defendant shall execute the sale deed after a particular period. It is not the plea of the defendant that it was a loan transaction or the document was executed for some other purpose.

Taking into consideration the aforesaid facts, this Court does not find any force in the first submission of the learned counsel for the

appellant.

2. Bahadur Singh, one of the attesting witnesses has stated in his evidence that Scribe Balbir Singh, who has drafted the agreement to sell, used to obtain signatures from the parties.

Once again, such argument was not raised before the Courts below. No issue was sought on this plea. No allegations have been made against the document writer. The document writer, who is a professional, has no axe to grind in the dispute between the parties. The agreement to sell as noticed above is drafted by a professional scribe. It has been executed on stamp paper worth Rs.300/-. It runs into three pages. All the pages have been signed. Apart therefrom, the defendant has also signed the endorsement for extension of the date on 15.10.2009.

3. Learned counsel has further submitted that Bahadur Singh, attesting witness has stated before the Court that no payment was made in his presence.

In the considered opinion of this Court, there is no such requirement that payment should be paid in the presence of an attesting witness or a marginal witness. The agreement to sell is not a testamentary document that the attesting witness must know everything. He is only required to attest the document. Merely because the payment was not made before him would not create a dent in the case of the plaintiff.

Taking into consideration the aforesaid facts and the concurrent finding of fact arrived at by the Courts below, this Court does

not find any good ground to interfere with the judgements passed by the Courts below.

Dismissed.

(ANIL KSHETARPAL)
JUDGE

27.10.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No