

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

165

RSA No.5680 of 2017 (O & M)
Date of Decision:04.12.2017

Sukhwant Singh

...Appellant

Versus

Nirmal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Sirphikhi, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.15025-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 258 days in re-filing the appeal is condoned.

Application is allowed.

CM No.15026-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 61 days in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for specific performance of agreement to sell dated 17.12.2010 with respect to the land measuring 10 marlas out of Khasra No.14/6. Plaintiff pleaded that the defendant had entered into an agreement to sell on a total sale consideration of Rs.2,80,000/- out of which

registration of sale deed was fixed as 17.06.2011. Plaintiff on the target date attended the Office of Sub Registrar, where sale deed was to be executed and registered but the defendant did not turn up. Plaintiff marked his presence by getting an affidavit attested from the Executive Magistrate.

Defendant, on the other hand, denied execution of the agreement. Defendant-appellant pleaded that he had borrowed certain amount from the plaintiff and under that pretext the agreement to sell has been forged.

Both the Courts after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. The Courts below held that the defendant could not prove by way of any evidence that the amount was in fact, borrowed as a loan.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the plaintiff has failed to prove the payment of Rs.2,40,000/- as he admitted in cross-examination that the aforesaid amount was withdrawn from the bank account, however, no evidence to prove thereof was produced.

I have considered the submission. It is not the case of the defendant that the agreement to sell is without consideration. Rather, it is the case of the defendant that he had borrowed the amount as a loan from the plaintiff. Therefore, the payment of amount in consideration is not disputed by the defendant.

In these circumstances, the argument of learned counsel for the appellant is clearly beyond what has been pleaded by the defendant in his

written statement.

Learned counsel for the appellant has produced before me a photocopy of the agreement to sell executed by the defendant-appellant in favour of the plaintiff. The agreement to sell is executed on 300 rupees non-judicial stamp papers. The stamp papers were purchased on 17.12.2010 i.e. the date of agreement to sell was executed. Photograph of defendant-appellant is affixed on the agreement to sell. The agreement to sell runs into 4 pages, each page is signed by the defendant-appellant. The stamp paper was purchased for the purpose of execution of the agreement to sell.

Still further, in the present case, the defendant had pleaded that agreement to sell is forged and fabricated. However, as found by the learned Courts below, defendant failed to produce any evidence to prove that the agreement to sell is forged and fabricated. The signatures of defendant-appellant on all the 4 pages of the agreement to sell clearly proves that the defendant-appellant had signed the agreement, after it has been drafted. The agreement to sell is in the local language i.e. 'Gurmukhi' (Punjabi Script). Defendant-appellant has also signed in the same language.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

04.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No