

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

RSA No.1348 of 1993 (O&M)

Date of decision : 01.03.2018

Sohan Lal

...Appellant

Versus

Resham Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Rohit Nagpal, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM No.1906-C of 1993

Application for permission to lead additional evidence, has been filed, so as to produce and prove a report of the Finger Print Expert to compare the thumb impressions of the appellant on the agreement to sell.

The defendant while filing the written statement had denied the execution of the agreement to sell. The defendant-appellant was given sufficient opportunity to prove his case. The defendant-appellant only denied the execution of the agreement. The trial Court decreed the suit. Before the First Appellate Court also, no effort was made by the defendant to produce the Finger Print Expert by moving an application for leading additional evidence. In these circumstances, this Court does not find any

ground to allow the application for additional evidence, at this stage. It may be worth noticing that the report of the Finger Print Expert is only an opinion of an Expert and not binding on the Court. A report of the Finger Print Expert is also not per se admissible.

In view thereof, the defendant-appellant has failed to satisfy the requirement of Order 41 Rule 27 CPC.

Application is dismissed.

Main Case

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for specific performance of the agreement to sell dated 30.10.1985, as also for permanent injunction.

The defendant totally denied the execution of the agreement to sell. In order to prove the agreement to sell, plaintiff examined Amolak Ram, Scribe of the agreement to sell as PW1, Gurpal Singh attesting witness as PW2 and the plaintiff himself appeared in the witness-box as PW3. Defendant himself appeared in the witness-box and reiterated that he has not executed any agreement to sell. In the cross-examination, he admitted that he knew the plaintiff who belongs to his village. He even denied the receipt of the earnest money.

On appreciation of the evidence, both the Courts below have decreed the suit filed by the plaintiff.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the records.

Learned counsel for the appellant has submitted that the suit was filed after a period of 2 years and 5 months from the target date fixed in the agreement to sell for execution and registration of the sale deed, which was 30.04.1986. He submits that since there is a delay in filing the suit, therefore, this Court must draw inference that the plaintiff was not ready and willing.

Learned counsel has further submitted that no notice was given to the defendant to come and execute the sale deed after the target date.

He has further submitted that the plaintiff has failed to prove that he was ready and willing to perform his part of the contract as the plaintiff did not prove his presence before the Sub-Registrar on the target date.

On the other hand, learned counsel for the respondent defended the judgments passed by both the Courts below. He has submitted that as per the Limitation Act, the suit for specific performance can be filed within a period of 3 years from the date fixed for registration of the sale deed in the agreement to sell. He submits that the suit was filed within a period of limitation. He has further submitted that the plaintiff had called upon the defendant-appellant through notice Ex.P2 dated 21.04.1986 calling upon the defendant-appellant to come and execute the sale deed on the target date. He submits that the aforesaid notice was received by the defendant-appellant. He further submitted that the plaintiff did visit the office of the Sub-Registrar and moved an application for marking his attendance, however, inadvertently counsel did not get application exhibited. Although, a copy thereof is part of the file.

As far as first argument of the learned counsel is concerned, it may be noticed that under the agreement to sell, out of the total sale consideration of ₹17,000/-, ₹16,000/- was paid. Only ₹1,000/- was remaining. In other words, more than 90% of the total sale consideration was paid. Such being the position, the delay in filing of the suit, which of course is within limitation would not come in the way of plaintiff to seek the specific performance of the agreement to sell. It is admitted fact that no third party rights have intervened. The execution of the agreement to sell is proved from the evidence led by the plaintiff. The marginal witness and Scribe of the agreement to sell has been examined. Hence, this Court does not find that the discretion exercised by the Courts while granting relief of specific performance of the agreement to sell is liable to be interfered by this Court in the Regular Second Appeal.

Second argument of the learned counsel is that no notice was given after the target date to the defendant-appellant. In this regard, it is to be noticed that when the target date for execution and registration of the sale deed was approaching, the plaintiff did get a notice issued to the defendant calling upon him to come and execute the sale deed vide notice dated 21.04.1986. This notice was sent through registered post. Such being the position, this Court does not find any substance in the argument of the learned counsel that no notice was served after the target date.

Another argument of the learned counsel is that the plaintiff is not proved to be ready and willing as he has failed to prove his presence in the office of the Registrar on the date fixed for execution of the sale deed. The plaintiff appeared in the evidence as PW3. The plaintiff when appeared

in the witness-box stated that he moved an application before the Sub-Registrar on 30.04.1986 to mark his presence but the defendant did not come present. The plaintiff was not cross-examined on this aspect of the matter, therefore, the evidence of the plaintiff has gone un-rebutted. Such being the position, this Court does not find any substance in the arguments of the learned counsel.

Learned counsel for the appellant has further argued that in fact the plaintiff was money lender and, therefore, the specific performance of the agreement to sell should not be granted.

He has drawn the attention of this court to the cross-examination of the plaintiff wherein the plaintiff has admitted the fact that some loan was given to the son of the defendant-appellant. In this regard, it may be noticed that the statement of the plaintiff has to be read carefully. The loan transaction between the plaintiff and Amrik Singh son of the appellant is 08.07.1987, when ₹6,000/- was given and a pronote was executed. This transaction is after the target date fixed in the agreement to sell. It is not the case of the defendant-appellant that he had borrowed a sum of ₹16,000/- (the amount of earnest money) as loan from the plaintiff. The defendant-appellant has chosen to deny the execution of the agreement to sell in total. When the defendant appeared in the evidence, he does not even state that there was any loan transaction between the plaintiff and the defendant. Last argument of the learned counsel for the appellant is also beyond the case set up by the defendant in his pleadings and evidence.

In view of the above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts

below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No