

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

RSA No.2323 of 1998 (O & M)
Date of Decision:17.04.2018

Mukhtiar Singh

...Appellant

Versus

Surjit Kaur and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kamal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for the appellant.

Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgments passed by the Courts below.

Plaintiff filed a suit for possession by way of specific performance of an agreement to sell with a consequential relief of permanent injunction or in the alternative for recovery of Rs.60,000/-.

Plaintiff claimed that defendant No.1-Surjit Kaur entered into an agreement to sell with him on 28.01.1993 for total sale consideration of Rs.1,08,000/- with respect to land measuring 7 kanals, 10 marlas and received Rs.10,000/- as earnest money. It is further pleaded that the target date for execution and registration of the sale deed was fixed on 30.08.1993. It is the case of the plaintiff that he remained ready and willing to perform his part of the contract, visited Tehsil Office at Ajnala and waited for defendant No.1 along with the balance sale consideration and other

presence, he had sworn an affidavit before the Executing Magistrate. The suit was filed on 05.10.1993. Defendant No.1 did not contest the suit and was proceeded against ex parte. Defendant No.2 filed written statement and pleaded that alleged agreement to sell dated 28.01.1993 is forged and fabricated as defendant No.1 had already entered into an agreement to sell with defendant No.2 on 04.06.1991 and received a sum of Rs.15,000/- as earnest money. Defendant No.2 further pleaded that he has also paid Rs.25,000/- to Mahal Singh, the mortgagee. It is further pleaded that as per agreement to sell, sale deed was to be executed on 30.04.1993 but due to stay order passed by the Court, sale deed could not be executed.

Learned trial Court after appreciating the evidence available on the file held that agreement to sell dated 28.01.1993 and payment of earnest money of Rs.10,000/- has been proved. Learned trial Court further found that the plaintiff was ready and willing to perform his part of the contract. However, learned trial Court refused to grant specific performance of the agreement to sell on the ground that there was a previous agreement by defendant No.1 in favour of defendant No.2 dated 04.06.1991. Hence, defendant No.2 is having preferential right, learned trial Court ordered refund of earnest money along with Rs.50,000/- as damages. First appeal preferred by the plaintiff was also dismissed.

In the considered opinion of this Court, the question of law which arises for consideration is **“whether the judgments passed by both the Courts below are result of misreading and non-reading of evidence available on the file with regard to validity and genuineness of the agreement to sell set up by defendant No.2 dated 04.06.1991”.**

Court to the following facts, which have not been noticed by the Courts below:-

(i) agreement to sell dated 04.06.1991 is executed on a non-judicial stamp paper worth Rs.3.00. The stamp paper was purchased on 11.05.1989. Non judicial stamp paper is valid only for a period of 6 months whereas agreement to sell drafted on the non-judicial stamp paper is after a period of more than 2 years.

(ii) defendant No.2 has examined 3 witnesses namely Gulzar Singh; Barkat Singh, Advocate, Notary Public and Mahender Singh-defendant No.2 himself. All the three witnesses have stated that the stamp paper was purchased on the day agreement to sell was executed. In other words, the stamp paper was purchased on 04.06.1991 whereas as per endorsement of the back of the non judicial stamp paper, it was purchased on 10.05.1989.

(iii) Examination of the stamp vendor was necessary because agreement to sell was required to be executed on a non-judicial stamp paper worth Rs.3/-. The stamp paper lost its validity after a period of 6 months i.e. in the month of November, 1989, therefore, the stamp paper on which agreement to sell was drafted is not valid.

Learned counsel for the appellant has further drawn attention of the Court to the statement of Gulzar Singh, who has appeared as DW-1. He has stated that agreement to sell was entered by the Notary Public in his register and the parties and the attesting witnesses had signed the aforesaid register whereas Barkat Singh when appeared in the evidence, has admitted that he had not made any entry in his register, although he took two

could not enter the agreement to sell in his register whereas subsequently he deposed that since it was a miscellaneous paper, therefore, no entry was made. A Notary Public, who has attested the document was required to enter the document attested by him in his register.

In response to the arguments of learned counsel for the appellant, learned counsel for the respondent has submitted that there is a concurrent finding of fact arrived at by the Courts, which cannot be interfered with. However, when confronted with the arguments of learned counsel for the appellant, he could not dispute this position.

Without repeating the arguments as noticed above, this Court is of the view that Courts below have failed to examine the evidence led by defendant No.2. The judgment passed by the Courts below are result of non-reading and misreading of the evidence of defendant No.2. Defendant No.2 was required to prove that agreement to sell dated 04.06.1991 was in fact entered into on that day.

In the considered opinion of this Court, defendant No.2 has miserably failed rather the agreement to sell as propounded by defendant No.2 is result of manipulation. Defendant No.1 has not chosen to contest the litigation. No evidence has been produced by defendant No.2 to prove that agreement to sell dated 04.06.1991 was entered into on that day and it was a genuine document. Counsel for defendant No.2 was called upon to disclose whether any suit for specific performance of the agreement to sell has been filed or any sale deed has been registered pursuant to the alleged agreement to sell dated 04.06.1991. His response is that since there was injunction, therefore, neither suit has been filed nor sale deed has been registered.

learned counsel for the appellant noticed above, this Court is of the opinion that the judgments passed by the Courts below while returning a finding that agreement to sell in favour of defendant No.2 is a genuine document, is result of misreading and non-reading of material evidence available on the file. Hence, question of law is answered in favour of the appellant.

However, taking into consideration the fact that agreement to sell was entered into more than 24 years back, the suit filed by the plaintiff shall stand decreed granting him decree for specific performance of agreement to sell subject to payment/deposit of balance sale consideration along with interest @ 9% per annum from the date of filing of the suit till the date of payment/deposit within a period of 3 months from the date of receipt of certified copy of the judgment.

Regular Second Appeal is allowed.

17.04.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No