

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

**RSA No.174 of 2005 (O&M)
Date of Order: 14.05.2018**

Shabeg Singh

..Appellant

Versus

Amandeep Singh

..Respondent

RSA No.306 of 2005 (O&M)

Balwinder Singh and another

..Appellants

Versus

Amandeep Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. L.S.Sidhu, Advocate,
for the appellant(s)

Mr. Sandeep Punchhi, Advocate,
for the respondent(s)

ANIL KSHETARPAL, J(Oral)

Father and son have filed two separate regular second appeals against the concurrent findings of fact arrived at by the courts below, decreeing separate suit for possession by way of specific performance of the agreement to sell.

Counsel for the parties are agreed that both these appeals can be disposed of by a common judgment.

On 06.01.1996, the defendants-appellants, father and son executed two agreement to sell, receiving earnest money of Rs.62,500/- in the case of father and Rs.1,00,000/- in the case of son. It was agreed that

the plaintiff would re-pay the bank loan and after getting the land free from charge, get the sale deed executed. No further payment was to be made to the defendants in both the suits. It is not in dispute that the plaintiff deposited the amount with the bank and got the land released from the mortgage on 02.07.1996. It is the case of the plaintiff that thereafter he has been visiting the defendant in both the suits to come and execute the sale deed but the defendant in both the suits kept on delaying, forcing the plaintiff to serve notices dated 08.02.1998 and 28.03.1998 but the defendant in both the suits did not come forward to perform their part of the contract.

In the written statement, defendant in both the suits denied execution of the agreement to sell and receipt of the earnest money.

Both the courts on appreciation of the evidence available on the file have found that the agreement to sell is proved and the plaintiff in both the suits is entitled to decree for possession by way of specific performance of the agreement to sell.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has vehemently argued that as per the stipulation in the agreement to sell, plaintiff was required to deposit the loan amount within a period of 6 months which he had deposited. However, he submits that the sale deed was to be got registered within 6 months from the date deposit was made by the plaintiff in the bank and therefore, the suit filed on 19.08.1998 suffered from delay and latches.

On the other hand learned counsel for the respondent-plaintiff has submitted that as per terms of the agreement to sell, after deposit of the

amount with the bank and release of the property, the sale deed was to be got registered by the defendant in both the suits and the plaintiff took all possible steps including oral request, written notices calling upon the defendant in both the suits to execute the sale deed, however they did not come forward.

Both the learned counsels have read over the agreement to sell. In the agreement to sell, it is specifically provided that after deposit of the loan amount with the bank, defendant in both the suits shall be liable to get the sale deed registered within a period of 6 months. No onus was placed on the plaintiff to get the sale deed executed within a period of 6 months.

Still further as per the agreement to sell entire payment of sale which was to be paid to the defendants in both the suits had already been paid. Remaining amount was to be deposited in the bank which was also deposited. No further payment was to be paid to the defendant in both the suits. After serving two notices, plaintiff filed a suit on 19.08.1998. The suit cannot be dismissed on the ground that it was suffered from delay and latches.

In view of the aforesaid, there is no ground to interfere with concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

May 14, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No