

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

RSA No.3472 of 2011 (O&M)

Date of decision:05.09.2018

Jai Singh and another

... Appellants

Vs.

Murari Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Nehra, Advocate
for the appellants.

Mr. Sandeep Kotla, Advocate
for respondent No.1.

AMIT RAWAL J.

C.M.No.9758-C of 2011

For the reasons stated in the application which is duly supported by an affidavit, delay of 43 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.9759-C of 2011

Deficient of the court fee has been made good.

C.M. stands disposed of.

RSA No.3472 of 2011 (O&M)

The appellants-defendants No.2 and 3 are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for

possession by way of specific performance of the agreement to sell dated 06.08.1999 entered into between the plaintiff-Murari Lal and defendant No.1/vendor-Vijay Singh, has been decreed and the appeal laid before the Lower Appellate Court was also dismissed.

Respondent No.1/plaintiff -Murari Lal instituted the suit bearing No.547 of 2001 for specific performance of the agreement to sell dated 6.8.1999 in respect of house total measuring 70 square yards (hereinafter called the “suit property”) agreed to be sold for a total sale consideration of ₹60,000/- against the receipt of ₹36,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 05.08.2001.

It was averred that defendant no.1/vendor entered into another agreement to sell with defendants no.2 and 3. However, on 05.08.2001, plaintiff remained present in the office of Sub-Registrar but defendant no.1 did not turn up for execution and registration of the sale deed. Defendant no.1/vendor in the written statement admitted the execution of the agreement to sell but came out with a story that it was the plaintiff who did not appear in the office of Sub-Registrar despite the fact that he was present throughout and therefore, earnest money was forfeited.

It was also disclosed that defendant no.1 entered into agreement to sell dated 16.06.1999 with defendant no.3 for a total sale consideration of ₹70,000/- and had received a sum of ₹30,000/- as earnest money. Even the sale deed dated 09.08.2001, post the date fixed in the

present case, was executed in favour of defendant no.3 but Sub-Registrar refused to register as the applicant had already submitted an application in this regard.

Appellants/defendants No.2 and 3 filed joint written statement but came out with a plea that agreement was prior to the agreement in dispute. It was alleged that stipulated date as per the agreement to sell dated 16.06.1999 was extended but the sale deed was executed on 09.08.2001. He did not have the knowledge of any agreement to sell dated 06.08.1999.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the possession of the suit land as detailed in para no.1 of the plaint by way of specific performance of the agreement to sell dated 6.8.1999 on payment of balance sale consideration of Rs.24,000/- alongwith stamp, registration and other incidental charges?OPP*
- 2. Whether the plaintiff has been ready and willing to perform his part of contract?OPP*
- 3. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 4. Relief.”*

The plaintiff examined following witnesses:-

PW1-Ravinder Parkash Sharma, Wasika Navis Beri

PW2-Bhopp Singh

PW3-himself

PW4-Sant Ram

PW5-Karambir Saini, Draftsman

On the other hand, defendants examined eight witnesses and closed the evidence. The appellant-defendants No.2 and 3 on the basis of pleadings brought on record both oral and documentary evidence.

The trial Court decreed the suit and appeal laid before the Lower Appellate Court was also dismissed.

Mr. Rakesh Nehra, learned counsel appearing on behalf of the appellants/defendants No.2 and 3 submitted that both the Courts below abdicated in not referring to the documentary evidence on record i.e. Ex.D1, and Ex.D3, register of the deed writer and of stamp vendor, respectively. Unclenching evidence, aforementioned leaves no manner of doubt that agreement to sell dated 16.06.1999 entered into between the vendor and appellant/defendants was prior in time to the one propounded by the plaintiff.

Respondent no.1/plaintiff had not been able to prove the readiness and willingness. The appellants were bonafide purchasers for a valuable consideration as the suit was filed on 07.08.2001 and the sale deed is of 09.08.2001, though not registered. Ex.D3 register of stamp vendor conclusively proved the fact that agreement to sell was actually entered on 16.06.1999. DW2- Gajanand, Deed Writer categorically stated that vendor defendant no.1 had received the consideration amount vis-a-vis agreement to sell dated 16.06.1999, therefore, there is gross illegality and perversity in

the judgments and decrees of the Courts below.

Mr. Sandeep Kotla, learned counsel appearing on behalf of the respondent No.1/plaintiff submitted that in pursuance to the judgment and decree, not even sale deed had been executed but possession of the suit property had also been taken. On merits, he submitted that defendants have miserably failed to prove the purchase of the stamp papers vis-a-vis alleged agreement to sell dated 16.06.1999. Defendant No.1 in the written statement admitted the execution of the agreement to sell but alleged for not honouring the performance as plaintiff did not appear. All these factors have been extensively examined by the Courts below. The concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity and thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Nehra.

The plaintiff has not only proved the execution of the agreement to sell but the same has been admitted by the vendor. On the other hand, for recording entry, it showed that there was reduction in the lines' space and in this regard, to a specific question in the cross-examination, witness admitted that it was not necessary that without exhausting the pages of register, during the validity of first register, other register can always be opened. He could not tell whether in the register maintained by him some pages have been left blank or not. All these factors

leads to an irresistible conclusion that appellant-defendants had managed to procure the agreement to sell of back date to belie the case of plaintiff. Concededly, alleged sale deed dated 09.08.2001 executed between appellants/defendants No.2 & 3 and defendant no.1 but was not registered as plaintiff had submitted an application. Once the judgments and decrees under challenge had already been executed as indicated above, it is too late in a day to put the clock back. The readiness and willingness has also been proved through affidavit, Ex.P4. The original agreement to sell dated 16.06.1999 has not seen the light of day, nor any application for secondary evidence was ever submitted.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 05, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No