

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1257 of 2013 (O&M)
Date of Order:23.02.2018

Krishan Kumar and another

..Appellants

Versus

Deepak Kumar Bagga and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate,
for the appellants.

Mr. Munish Gupta, Advocate,
for respondent nos.1 to 3.

ANIL KSHETARPAL, J(Oral)

C.M.No.3307-C-2013

Prayer in this application is for permitting Krishan Kumar s/o Gurbax Rai, appellant no.1, to file appeal along with original defendant Gurbax Rai as Krishan Kumar claims to have purchased the property vide registered sale deed dated 08.10.2012.

Application filed by the appellant is allowed. The appellant is granted leave to appeal.

RSA No.1257 of 2013

Defendants-appellants are in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for specific performance of the agreement to sell dated 12.02.1997 with respect to land measuring 9 kanals 10 marlas for a total sale consideration of Rs.1,90,000/-, out of which Rs.1,50,000/- was paid as earnest money.

Bholla Singh was the original owner. Bholla Singh had appointed Gurbax Rai, appellant no.2, as his attorney. Gurbax Rai as an attorney had executed the agreement to sell. As per the agreement to sell, the date for execution and registration of the sale deed was fixed as 12.11.1999. Plaintiff claims that she visited the office of the Sub-Registrar on 12.11.1999 and got her presence marked, however, the defendants did not come forward to execute the sale deed. Plaintiff further pleaded that she got served a notice on defendants no.1 and 2 calling upon them to come and execute the sale deed, however, the notice was not responded. Plaintiff filed the suit on 28.10.2002. Defendant no.1 filed written statement claiming that he has already sold the entire property to Krishan son of Gurbax Rai on 12.12.1997 and hence he has no connection.

Defendant no.2 denied the execution of the agreement to sell and pleaded that in fact Deepak Bagga son of the plaintiff are having business dealing and Gurbax Rai had in fact borrowed a sum of Rs.50,000/- for marriage of the daughter, which has been repaid and the plaintiff has misused the signatures on the blank papers.

Both the courts below after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

I have 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 submitted that although the agreement to sell is scribed on Rs.50/- non-judicial stamp paper, however, the second page of the agreement to sell is a white paper (non judicial paper). He submitted that the prior signatures of Gurbax Rai

on two papers have been misused.

With the help of learned counsel for the appellants, this court has carefully examined the agreement to sell, Ex.P1. On the first page, Gurbax Rai has signed the agreement to sell on extreme left hand corner towards left hand margin. On the second page, signatures of Gurbax Rai exists at two places, one where narration of the agreement to sell comes to an end and the second after Gurbax Rai has written with his own hand “I received Rs.1,50,000/- (One lac fifty thousand rupees as earnest money)”.

At this stage, it would be significant to extract the statement of Gurbax Rai when he appeared in the witness box:-

“I had taken an amount of Rs.50,000/- from Deepak Kumar a day before the execution of the agreement and general power of attorney. No document was written at the time of lending of money from Deepak Kumar. He did not obtain my signatures on any paper at that time. Again said I had signed one paper i.e. stamp paper of Rs.50/-. I have seen Ex.P1. It is the same paper on which Deepak Kumar got my signatures. I had signed only at one place on the blank paper. I have seen my signatures on the 1st page of the agreement Ex.P1 and I admit the same to be my signatures. I have seen my signatures on Ex.DW3/1 and the same are my signatures. I have also seen my signatures on the 2nd page of Ex.P1 and I admitted those to be my signatures. I have seen the 2nd signatures on 2nd page of Ex.P1. I admit the same to be my signatures. I have seen the agreement Ex.P1 the

lines written as “I received Rs.1,50,000/- (One lac fifty thousand rupees earnest money) and I admit the same to be in my hand writing.”

In view of the fact that Gurbax Rai had admitted his signatures on the first and second page of the agreement to sell and he has also admitted his hand writing to the fact that he has received Rs.1,50,000/-, the plea taken by the defendant in the written statement was against the record.

Both the courts have further examined that Gurbax Rai, defendant no.2, had pleaded that he had taken a loan of Rs.50,000/- from Deepak Kumar. The courts have noticed that on the one hand Gurbax Rai claims that he was in need of money, whereas on the same day he has paid a sum of Rs.4,00,000/- to Bhola Singh for getting sale deed registered in favour of his son.

Next argument of learned counsel for the appellants is that the suit is belated as the suit was filed almost 3 years after the date fixed for execution and registration of the sale deed for specific performance of the agreement to sell.

No doubt the suit was filed after almost 35 months. However, as per the Limitation Act, 1963, the suit for specific performance of the agreement to sell can be filed within three years from the date fixed for execution and registration of the sale deed. In any case, plaintiff before filing a suit served a notice on the defendants calling upon them to come and execute the sale deed.

The aforesaid notice was not responded. Plaintiff has pleaded in her plaint that she was always ready and willing to perform her part of the contract. The third party rights have not intervened. In such circumstances,

the specific performance of the agreement to sell cannot be denied to the plaintiff merely on account of delay in filing the suit.

Next submission of learned counsel is that the signatures of Gurbax Rai are with different ink on both the pages. He submitted that both these pages were obviously signed separately.

As noticed earlier, on the first page of the agreement to sell, Gurbax Rai has signed in English, on the left hand margin. On the second page, Gurbax Rai signed twice over and he wrote with his hand that he has received a sum of Rs.1,50,000/- (One lac fifty thousand rupees as earnest money). If the signatures were on the blank papers, there could not be any writing that Rs.1,50,000/- was received as earnest money. Merely because two different pens were used for signing on two different pages would not make the agreement to sell doubtful.

Next argument of learned counsel is that the stamp paper for specific performance of the agreement to sell was purchased on 11.02.1997, whereas the General Power of Attorney was executed in favour of Gurbax Rai on 12.02.1997. He submitted that on the day he purchased the documents, Gurbax Rai was not even attorney.

In the considered opinion of this Court, this would come to the rescue of the appellants. Gurbax Rai is admittedly, a property dealer. Gurbax Rai was having deal of the property with Bhola Singh. Even if he had purchased the stamp paper a day before the General Power of Attorney was executed, that fact itself cannot be used by the appellants to deprive plaintiff of the relief for specific performance of the agreement to sell to which the plaintiffs are entitled to.

In view of the discussion made hereinabove, there is no scope

for interference with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

February 23, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No