

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

RSA No.2006 of 2013 (O&M)

Date of decision:18.05.2018

Ajaib Singh

... Appellant

Vs.

Tejwant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Majithia, Advocate
for the appellant.

Mr. Amarjit Markan, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

C.M.No.5333-C of 2013

For the reasons stated in the application which is duly supported by an affidavit, delay of 44 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.2006 of 2013 (O&M)

The present appeal is directed against the judgments and decrees of both the Courts below, whereby, suit of the respondent-plaintiff seeking possession by way of specific performance of agreement to sell dated 27.08.2008 in respect of land measuring 8 kanals, has been decreed by the trial Court and affirmed by the Lower Appellate Court.

The respondent-plaintiff instituted the suit seeking specific performance of the agreement to sell, ibid in respect of land having purchased ₹20 lacs per acre. On payment of earnest money of ₹17.50 lacs, the stipulated date for execution and registration of the sale deed was fixed as 01.12.2008. On 01.12.2008, plaintiff remained present before the office of Sub-Registrar alongwith balance sale consideration but defendant did not turn up. The plaintiff also served a legal notice dated 08.12.2008 to the defendant but the same remained un-replied and thus, sought the discretionary relief by filing a suit on 17.07.2009.

The appellant-defendant appeared and filed written statement by denying the agreement to sell and stated that the same was drafted on the blank stamp papers and thus, it was a result of fraud and mis-representation.

On the basis of pleadings of the parties, the trial Court framed as many as seven issues. The respondent-plaintiff examined four witnesses and brought on record Ex.P1 to Ex.P8 and Ex.Pq/A, khasra girdawari for the year 2007-08, whereas, appellant-defendant examined five witnesses and brought on record Ex.D1 to Ex.D3.

The trial Court on the basis of evidence found that respondent-plaintiff had proved the ingredients of Section 16(c) of Specific Relief Act as well as attestation of the agreement and granted the discretionary relief and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. S.S.Majithia, learned counsel appearing on behalf of the appellant-defendant submits that respondent-plaintiff failed to prove on record passing of sale consideration of ₹17.50 lacs as it was a cash transaction. The onus was upon the plaintiff to prove the same. Having failed to do so, the trial Court ought not to have granted the discretionary relief. The Income Tax Return, Ex.P10 brought on record did not prove that plaintiff had passed the consideration in the year 2008-09 for purchasing the disputed land. Even deed writer has not been examined. All these facts have not been examined by the Courts below, thus, there is gross illegality and perversity in the judgments and decrees under challenge.

Per contra, Mr. Amarjit Markan, learned counsel appearing on behalf of the respondent-plaintiff submits that no ingredients of fraud and mis-representation had been proved on record, for, it was obligatory upon the defendant to prove the same. The onus was upon the appellant-defendant as per the provisions of Order 6 Rule 4 CPC with regard to aforementioned pleadings. It was Balwinder Singh not Talwinder Singh (wrongly typed as Talwinder Singh) and therefore, his signatures were obtained. A registered notice carried a presumption of truth as per the provisions of Section 27 of General Clauses Act. If at all, there was some truthfulness in the stand taken in the written statement, nothing prevented the appellant to file reply to the legal notice. Agreement to sell has been proved on record through testimony of stamp vendor and thus, urges this Court for affirming the concurrent findings of fact which do not suffer from

any illegality and perversity.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Majithia, for, record of the stamp papers revealed that stamp papers for the purpose of entering into agreement to sell dated 27.08.2008, were purchased by Ajaib Singh/appellant-defendant. Both the witnesses despite extensive cross-examination had been consistent and coherent with regard to execution and passing of the earnest money. It was incumbent upon the appellant-defendant to prove that how and in what circumstances the blank stamp papers were signed and given to the plaintiff which have been converted into agreement to sell, for, it is not a case where particulars of the properties agreed to be sold were known to the plaintiff. Jaspal Kaur, who attested the agreement to sell testified that photographs of the parties, i.e., vendor and vendee and her evidence was not shattered in cross-examination. PW2 also deposed in the same lines regarding execution of the sale deed and passing of the reference. All these facts weighed in the mind of the Courts below while decreeing the suit, for, the suit aforementioned was filed on 17.07.2009 within a period of seven months from the issuance of legal notice, thus, submissions of Mr. Majithia, do not enable this Court to form a different opinion than the one arrived at by the Courts below.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below 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.

Accordingly, the appeal stands dismissed.

May 18, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No