

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

RSA No.2132 of 2013 (O & M)
Date of Decision:30.05.2018

Naib Singh

...Appellant

Versus

Ranjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Jammu, Advocate
for the appellant.

Mr. Inderjit Sharma, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Arguments were heard at length and the judgment was pronounced. Now the Court proceed to record its reasons.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court while deciding a suit for specific performance of the agreement to sell.

In the considered opinion of this Court, following substantial question of law arises for consideration:-

(i) whether marginal witnesses are required to know terms of the contract entered into between the parties and they must necessarily witness the payment of the amount under the contract, failing which their evidence cannot be relied upon ?

dated 07.02.2008 entered into between the plaintiff and the defendant with respect to land measuring 8 kanals and 16 marlas at the rate of Rs.9,00,000/- per acre and received a sum of Rs.5,00,000/- as earnest money. As per the agreement, sale deed was to be executed and registered on 11.05.2008. Plaintiff further pleaded that he had sent notice to the defendant to come and execute the sale deed on 08.05.2008. It is further pleaded that the plaintiff visited the office of Sub Registrar alongwith balance sale consideration on 09.05.2008 as 10.05.2008 and 11.05.2008 were holidays and he got his presence marked by getting an affidavit attested. Defendant contested the suit and pleaded that agreement to sell is forged and fabricated document.

Learned trial Court after appreciating the evidence available on the file, including that of the plaintiff and both the marginal witnesses, decreed the suit while granting decree for specific performance of the agreement to sell.

Defendant filed the first appeal. Learned First Appellate Court has chosen to reverse the finding of the learned trial Court by giving following reasons:-

(i) both the marginal witness i.e. PW-1 and PW-2 have stated that terms of the agreement were not settled before them and payment of the earnest money was not in their presence.

(ii) the alleged scribe of the agreement has not been examined

(iii) the stamp paper for execution of the agreement to sell was purchased on 06.02.2008 and not on 07.02.2008 as has been stated by the plaintiff.

(iv) no evidence has been led to prove that notice dated

Now the stage is set for considering question of law:-

(i) agreement to sell is a contract between the parties, which is governed by the Indian Contract Act, 1872. Agreement to sell is defined under Section 54 of The Transfer of Property Act, 1882 describes it as a contract for sale. Section 54 of the Transfer of Property Act, which is extracted as under:-

*“54. **“Sale” defined.**—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made.**—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

***Contract for sale.**—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”*

Neither Section 54 nor the Indian Contract Act, 1872 provided that such contract for sale shall be required to be attested by two marginal/attesting witnesses. As per the provisions of the various Acts, only few documents/instruments are required to be attested by two attesting witnesses like the Will, gift deed, mortgage deed etc. However, contract for sale or agreement to sell is not required to be attested by the marginal witnesses. Further marginal/attesting witnesses are to attest or witness execution of the document, which is being attested. Such attesting/marginal witnesses are not required to be privy to the minute details of the agreement or terms of the agreement arrived at between the parties. These marginal witnesses are not required to necessarily witness payment of the consideration. Therefore, the learned First Appellate Court clearly erred in returning a finding that agreement to sell is not proved as both the attesting witnesses have failed to state that what were the terms of the agreement settled in their presence or payment was made in their presence. Both the attesting witnesses have clearly stated that the agreement to sell was attested by them by putting their signatures in the presence of the parties to the agreement who had also signed in their presence.

In the considered opinion of this Court, such statement of the marginal witnesses is sufficient to prove due execution of the agreement to sell. In view of the discussion made above, question of law is answered in favour of the appellants.

Now let us deal with other reasons given by the learned First Appellate Court. Learned First Appellate Court has also reversed the judgment of the learned trial Court on the ground that scribe has not been

prove execution of the agreement to sell. Scribe is the person, who scribes the agreement to sell.

Still further, learned First Appellate Court has held that the stamp paper was purchased a day prior i.e. 06.02.2008 and, therefore, it is inconsistent with the evidence led. In this regard, it may be noticed that it is the defendant, who had purchased the non-judicial stamp paper of Rs.300/- for execution of the agreement to sell. Defendant has signed on the endorsement when he purchased the stamp paper. Agreement to sell is drafted over three different sheets of paper worth Rs.100/- each. All the three pages have been signed by Ranjit Singh (defendant-respondent). No evidence has been led to establish that either the signatures of Ranjit Singh are not there or they are forged.

In these circumstances, once the agreement to sell is in writing signed by the parties, small variation in oral evidence is not sufficient to disbelieve a written contract between the parties.

Next reason assigned by the Court that service of notice dated 08.05.2008 is not proved. Even if service of such notice is proved, still the plaintiff is proved to be ready and willing as he visited the office of Sub Registrar on 09.05.2008 and filed the suit within a period of two months and six days from the date fixed for execution and registration of the sale deed. Plaintiff has appeared in the evidence and has specifically stated that he was always ready and willing to perform his part of the contract and he was in possession of the balance sale consideration on the target date.

In view of the discussion, the appeal is allowed and the judgment passed by the learned First Appellate Court is set aside and the

judgment passed by the learned trial Court is restored. Plaintiff is granted

three months time from the date of receipt of certified copy of the judgment and decree, to deposit the balance sale consideration if not already deposited.

30.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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