

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

RSA No.2210 of 2013 (O&M)

Date of decision : 17.05.2018

Amarjit Singh

...Appellant

Versus

Sarabjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. J.L. Malhotra, Advocate for the appellant.

Mr. Harkaran Singh, Advocate for
Mr. B.S. Bhalla, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff filed a suit for joint possession by way of specific performance of the agreement to sell dated 31.01.2001 apart from seeking declaration that the sale deed executed on 24.05.2001 by defendant No.1 in favour of defendant Nos.2 and 3 does not affect his rights or in the alternative, relief of refund of the earnest money alongwith interest.

Defendant No.1, who was the owner of the property does not dispute that there was an agreement to sell and earnest money was received. She pleads that as per the agreement to sell, 16.05.2001 was the stipuated date for the execution and registration of the sale deed. Since, the plaintiff did not come forward to get the sale deed executed whereas she was ready to perform her part of the contract, therefore, she visited the office of the Sub-Registrar

and got the affidavit attested on 16.05.2001 from the Sub-Registrar to show her presence. She further claims that she has now sold the land in favour of defendant Nos.2 and 3 including the land covered by the agreement to sell. Defendant Nos.2 and 3 have pleaded that they are bona fide purchasers for the valuable consideration.

On appreciation of the evidence, both the Courts below have dismissed the suit filed by the plaintiff after recording a finding that the plaintiff was not ready and willing to perform his part of the contract on the agreed date i.e. on 16.05.2001.

Learned counsel for the appellant has submitted that non-judicial stamp papers on which the sale deed in favour of defendant Nos.2 and 3 has been executed were purchased by the plaintiff. He, hence, submitted that in fact stamp papers were snatched from the plaintiff and thereafter those stamp papers were used for the execution and registration of the sale deed. This Court has examined the aforesaid argument. However, do not find any substance therein for the following reasons:-

1. The plaintiff has nowhere pleaded that the stamp papers were snatched from him in the plaint. The plaintiff when appeared in the evidence as PW3 also does not depose about the same. The non-judicial stamp papers have been purchased in the name of defendant No.1 i.e. Smt. Sarabjit Kaur. Still further, a careful reading of the statement of defendant No.3 who has appeared in the witness-box establishes that in fact defendant No.3 and the plaintiff are neighbours and are having good terms. Defendant No.3 has further stated that in fact defendant Nos.2 and 3 have purchased the property from Amarjit Singh i.e. the plaintiff. Still further, the agreement to sell in favour of plaintiff was only for land

measuring 10 kanals and 15 marlas whereas the sale deed in favour of defendant Nos.2 and 3 is for the land measuring 12 kanals and 17½ marlas. Total sale consideration according to the agreement to sell in favour of the plaintiff comes to ₹4,30,000/- whereas the sale deed in favour of defendant Nos.2 and 3 is for total sale consideration of ₹3,22,000/-

2. The plaintiff while filing the suit, nowhere claims that the date for the execution and registration of the sale deed was ever extended. However, a bare look at the agreement to sell shows that there is an endorsement typed for extending the date to 07.06.2001. However, the aforesaid endorsement is not signed by any of the party. If one examines the evidence of plaintiff-Amarjit Singh who appeared as PW3, it is clearly admitted by him that defendant No.1 refused to extend the date. That fact itself proves that on the date the sale deed was to be executed, plaintiff was not ready and the agreement to sell in favour of the plaintiff had come to an end.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No