

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3315 of 2013 (O&M)

Date of Decision: April 02, 2018

Laxmi Devi & others

...Appellants

Versus

Layak Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Keshav Pratap Singh, Advocate,
for the appellants.

Mr.Lokesh Sinhal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

CM No.8898-C of 2013

For the reasons mentioned in the application, which is supported by an affidavit, delay of 50 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.3315 of 2013

Appellants, legal representatives of Dharamvir (vendor), remained unsuccessful in a suit preferred by the respondent-plaintiff seeking specific performance of the agreement to sell dated 9.5.2003.

It would be apt to give few facts, which are essential and necessary for the adjudication of the lis.

Respondent-plaintiff instituted the aforementioned suit seeking specific performance of the agreement to sell dated 9.5.2003 having entered into for selling and purchasing the land measuring 6 kanals 13 marlas at the rate of ₹2,07,812/-, i.e., ₹2,50,000/- per acre against the payment of earnest

money of ₹1,24,000/-. The stipulated date was 9.5.2004. The aforementioned suit was filed on 5.6.2004. The agreement to sell was registered on 16.5.2003. It was stated that the predecessor-in-interest did not come forward for performance of the agreement to sell, which necessitated the plaintiff to institute the suit.

The defendant appeared and contested the suit by asserting that the agreement to sell was forged and fabricated and, if proved otherwise, signatures were obtained by the respondent-plaintiff for execution of some loan papers and prayed for dismissal of the suit.

The trial Court, on the basis of the aforementioned pleadings, framed the following issues:-

- “1. Whether the plaintiff is entitled to the specific performance of agreement dated 9.5.03? OPP*
- 2. Whether the plaintiff is entitled to possession of the suit property? OPP*
- 3. Whether the plaintiff has not come to the court with clean hands and its effect? OPD*
- 4. Relief.”*

Respondent-plaintiff, in order to prove execution of agreement to sell, examined four witnesses, namely, PW-1 Kishan Chand Sharma, Draftsman, PW-2 Girraj, attesting witness, PW-3 plaintiff himself and PW-4 Man Singh ARC from the office of Sub Registrar. He also brought on record following documents:-

- Ex.P1: Registered agreement of sale dated 9.5.2003;
- Ex.P2: Receipt dated 9.5.2003;
- Ex.P3: Attested affidavit dated 11.5.2004 for marking his presence;
- Ex.P3: Endorsement of Sub Registrar Palwal;
- Ex.P4: Copy of jamabandi for the year 1977-78; and

Ex.P5: Copy of jamabandi for the year 1997-98.

On the other hand, defendant has examined three witnesses, namely, Ajay Kumar as DW-1 and Pehlad as DW-3. Defendant himself appeared as DW-2.

The trial Court, on the basis of the preponderance of the evidence, decreed the suit holding that the agreement to sell had been executed for sale of the land referred above and granted two months' time to the respondent-plaintiff to deposit the balance sale consideration for the purpose of execution of the sale deed. The appeal preferred also met with the same fate.

Mr.Keshav Pratap Singh, learned counsel appearing on behalf of the appellants submitted that a great hardship has been caused to the appellants. The respondent-plaintiff has not been able to prove the agreement to sell. The discretionary relief under Section 20 of the Specific Relief Act was not required to be granted. The signature of Dharamvir had been taken on some papers, but the respondent-plaintiff fraudulently forged and fabricated the said documents and converted the same into agreement to sell. No sane person would be agreed to sell the land for a meager amount, whereas the value of the property was much higher at the relevant point of time.

Per contra, Mr.Lokesh Sinhal, learned counsel representing the respondent-plaintiff submitted that a registered document carries presumption of truth and the same has been proved through the testimony of the attesting witness Girraj. The defendant has not been able to discharge the onus with regard to the alleged forgery and fabrication and it is on that count, the Court has no other occasion but to grant the discretionary relief.

The sale deed has already been executed and possession has also been taken over and, thus, urged this Court for upholding the concurrent findings.

Mr.Keshav Pratap Singh, in rebuttal, submitted that only the possession in the revenue record has been entered, but physical possession is with his clients.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Keshav Pratap Singh, for, no document has been brought on record to show that the value of the property was much more than agreed to be sold. Since the sale deed has already been executed and possession has been taken, the fact of the matter is that the defendant had not able to discharge the onus with regard to the forgery and fabrication, whereas the agreement to sell was registered. In such circumstances, the Courts had no other occasion but to grant the discretionary relief. The suit was also filed less than a month from the target date, for, the target date was 9.5.2004 and the suit was filed on 5.6.2004. In my view, the respondent-plaintiff has been able to prove the continuous readiness and willingness, which is one of the grounds for granting discretionary relief.

For the reasons stated above, there is no illegality or perversity in the concurrent findings. No ground for interference is made out, much less any substantial question of law arises. Resultantly, the appeal is dismissed.

April 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No