

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-4169-2016 (O&M)
Date of Decision: 30.08.2018

Surinder Singh

--Appellant

Versus

Mam Raj

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rakesh Gupta, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

CM-10698-C-2016

In view of the averments made in the application duly supported by an affidavit of the applicant/appellant, the delay of 115 days in filing the accompanying appeal is condoned.

Application is disposed of.

Main Appeal

Plaintiff Mam Raj filed a suit for possession by way of specific performance of sale agreement dated 18.6.2008 against defendant Surender Singh and which was decreed by the Trial Court on 17.12.2012. Defendants having preferred an appeal, the same has been dismissed by the Lower Appellate Court vide judgement dated 20.8.2015 and thereby affirming the judgement and decree of the Trial Court.

Defendant-appellant is in second appeal before this Court.

Brief facts of the case are that the suit for specific performance was filed on the averments that the defendant-appellant was owner of the suit land measuring 2 kanals and 15 marlas. A sale agreement dated 18.6.2008 was entered into, whereby the defendant had agreed to sell the suit land to the plaintiff/respondent @ Rs.8 lakhs per killa and Rs.2 lakhs

was paid towards earnest money. Sale deed was agreed to be executed and registered on or before 20.9.2008 on payment of balance sale consideration. On 18.9.2008 plaintiff-respondent approached the defendant asking him to reach the office of the Sub Registrar on 19.9.2008 as 20.9.2008 was a holiday. The defendant declined to do so. Plaintiff again approached the defendant on 21.9.2008 to reach the office of Sub Registrar, Dera Bassi on 22.9.2008 for purposes of registration of the sale deed. Plaintiff asserted that on 22.9.2008 he remained present in the office of Sub Registrar concerned but the defendant did not turn up and consequently he got his presence marked. Thereafter, a legal notice dated 18.12.2008 was got served upon the defendant through counsel and the defendant was again called upon to reach the office of Sub Registrar on 2.1.2009. Defendant again did not turn up and under such circumstances the suit was filed.

Upon notice, defendant filed a written statement setting up a case of denial as regards having agreed to sell the suit land to the plaintiff or having received a sum of Rs.2 lakhs towards earnest money. A stand was taken that the defendant had met one Dayal Singh, who informed him that he had links with the plaintiff-Mam Raj and whose relatives are into the business of sending people abroad. Since the defendant also wanted to go to Canada, he had met the plaintiff/respondent and handed over his Passport for the necessary documentation and also given a signed cheque of Rs.2 lakh as security. At that time plaintiff had obtained his signatures on certain blank stamp papers and it was only in December, 2008 when he had received a legal notice from the counsel of the plaintiff that he became aware that the blank signed papers had been used to set up an agreement to sell. Defendant asserted that he had even approached the local police as

regards such fraud having been played but since no action was taken, he even filed a complaint against plaintiff.

As has been noticed herein above, suit of the plaintiff was decreed in toto and the civil appeal preferred by the defendant has been dismissed.

Counsel for the defendant-appellant has argued that a complaint had been filed against plaintiff-respondent Mam Raj as also Dayal Singh and in pursuance to which they had been summoned by the competent court. The complaint was as regards a fraud having been played and certain blank signed papers having been misused. Under such circumstances the courts below have erred in granting relief of specific performance in relation to a document, the execution of which was under suspicion and cloud. Further urged that even the opinion of the Handwriting Expert contained in the report Ex.PW-4/B has been completely brushed aside by the Trial Court. Counsel argues that as per opinion of the Handwriting Expert the sale agreement Ex.P-1 had been typed over a blank signed stamp paper. It is contended that the judgements passed by the courts below suffer from a complete misappreciation of evidence.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal.

It is a case where the agreement to sell dated 18.6.2008 has been duly proved on record as Ex.P-1. The plaintiff/respondent besides making his own statement, examined one of the attesting witnesses Dayal Singh and who has corroborated the version of the plaintiff/respondent. The courts below have further taken cognizance that on 28.11.2008 on a complaint filed by the plaintiff-respondent Mam Raj, a Panchayat of the

village had gathered and after hearing both the parties the Sarpanch had scribed a *Panchayat Faisla* Ex.P-5, whereby the appellant-defendant was called upon to either refund Rs.2 lakh received as earnest money or to get the sale deed executed as per terms of the sale agreement dated 18.6.2008. Ex.P-5 is stated to be bearing the signatures of Mam Raj/plaintiff-respondent, Dayal Singh, Lambardar Karnail Singh as also of the defendant-appellant Surender Singh. In his cross-examination, defendant-appellant having been confronted with the document Ex.P-5 admitted the same.

The defendant-appellant has not denied serving of the legal notice upon him dated 18.12.2008 whereby he had been called upon to appear in the office of Sub Registrar concerned on 2.1.2009 for the purposes of execution and registration of the sale deed. If, it were his case that the agreement to sell had been set up fraudulently, then, surely the defendant-appellant could have responded to the notice by setting up such defence. Concededly no response in terms of taking such stand had been submitted to the legal notice.

Counsel for the defendant-appellant has during the course of arguments conceded that the criminal complaint that had been filed against the plaintiff-respondent as regards fraud having been committed has since been dismissed.

Even otherwise, if the sequence of facts and circumstances are collated i.e. the agreement to sell having been entered into on 18.6.2008, the target date for execution and registration of the sale deed fixed as 20.9.2008, legal notice dated 18.12.2008 having been served by the plaintiff-respondent on account of the defendant-appellant having not come present in the office of Sub Registrar, Dera Bassi and the suit for specific

performance having been instituted without any further delay on 19.1.2009, the same would reflect upon the readiness and willingness on the part of the plaintiff-respondent in performing his part of the contract.

In view of the discussion herein above, no infirmity is found in the view taken by the courts below whereby the plaintiff-respondent has been held entitled to the main relief of specific performance of the contract/agreement to sell dated 18.6.2008.

No merit, appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

30.08.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No