

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5139 of 2016 (O&M)

Date of Order:29th January, 2018

Kailash Chand

..Appellant

Versus

Balbir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Parunjeet Singh, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Defendant-appellant is in appeal against the judgment and decree passed by the learned first appellate court decreeing a suit for possession by way of specific performance of the agreement to sell dated 09.08.2005, filed by the plaintiff-respondent.

Plaintiff claimed that the defendant is not honouring the agreement to sell dated 09.08.2005 and hence he sought specific performance by pleading that he was always ready and willing to perform his part of the contract. Plaintiff further pleaded that out of total sale consideration of Rs.4,50,000/-, he has paid to the defendant a sum of Rs.4,00,000/- i.e., 90% of the total consideration as earnest money. He further pleaded that with a view to show his bonafide, plaintiff visited the office of Sub-Registrar where sale deed was to be executed and registered and he got his presence marked on 03.07.2007. It was further pleaded that the plaintiff had also issued a notice calling upon the defendant to perform his part of the contract on 12.08.2008, however, the defendant did not come forward.

Defendant, on the other hand, submitted that in fact his signatures were obtained on a blank papers as he was in need of money and he had taken a loan of Rs.2,00,000/-. However, the defendant-appellant denied execution of the agreement to sell or receipt of earnest money of Rs.4,00,000/-

The learned trial Court dismissed the suit, however, the learned first appellate court has reversed the aforesaid finding and decreed the suit. Learned first appellate court while accepting the appeal has given the findings that the defendant-appellant has admitted his signatures with dates put underneath the signatures on the agreement to sell dated 09.08.2005, endorsement on the back of the first page of the agreement to sell when the date for execution and registration of the sale deed was extended from 30.06.2006 to 30.06.2007. Learned first appellate court has noticed that the defendant-appellant has also admitted his signatures on a note written by the stamp vendor while issuing non judicial stamp paper (having adhesive stamps). Learned first appellate court has further noticed that the defendant has further admitted his signatures on the register of the stamp vendor. Learned first appellate court has also noticed that the defendant has accepted receipt of the amount of Rs.2,00,000/-. With these findings, the learned first appellate court has reversed the findings of the trial court.

Learned counsel for the defendant-appellant has submitted that the suit was filed after a period of 1 year and 9 months from the extended date (30.06.2007) for execution and registration of the sale deed, hence the suit was belated. He has further submitted that merely because the defendant-appellant has admitted his signatures, the contents of the agreement to sell cannot be deemed to be admitted. He has further

submitted that in fact the agreement to sell was not intended to be acted upon and it was only executed as a security document to secure the repayment. He has further submitted that the learned first appellate court has not chosen to reverse the findings of the trial court and, therefore judgment of the learned first appellate court is liable to be set aside.

As per limitation Act, the limitation for filing of the suit for specific performance of the agreement to sell is 3 years from the date fixed for execution and registration of the sale deed or no such date is fixed, from the date of refusal of other party comes to the knowledge of the plaintiff. In the present case, the suit was filed within the period of 3 years. In fact the suit was filed after a period of 1 year and 8 months. The extended target date for execution and registration of the sale deed was 30.06.2007. Plaintiff, thereafter, got his presence marked before the office of Sub-Registrar on 03.07.2007 as 30.06.2007, 01.07.2007 and 02.07.2007 were holidays. Thereafter, the plaintiff got a notice issued to the defendant calling upon him to come and execute the sale deed and thereafter the suit was filed on 09.03.2009.

In the considered opinion of this Court, once the limitation for filing the suit is 3 years from the target date for execution and registration of the sale deed, and the suit has been filed within the limitation, it cannot be dismissed on the ground that the suit is belated.

Next argument of learned counsel for the appellant is that the mere admission of the defendant admitting his signatures on the agreement to sell cannot be taken to be an admission of the contents of the document. He submitted that the defendant-appellant has pleaded that his signatures were obtained on the blank papers.

This Court has seen the agreement to sell Ex.P1 on the file. On the first page, the defendant-appellant has signed on the left hand margin. On the second page the defendant-appellant has signed where narration of the agreement to sell comes to an end where non judicial stamp is affixed. On the second page, the defendant-appellant has put his signatures with date. A non judicial stamp paper having adhesive stamp was purchased by the defendant-appellant on 09.08.2005 i.e., the date of agreement to sell and has signed in token of a purchase the stamp paper. The defendant-appellant has also signed in the register of the stamp vendor. After lapse of one year, defendant-appellant has also signed on the back of the first page of the agreement to sell along with the date of extension. The agreement to sell is executed in Hindi, which is a local language. The defendant-appellant has signed in English. The manner in which the defendant-appellant has put his signatures does not show that the plaintiff's signatures were obtained on blank papers.

Once the agreement to sell is proved to have been executed by the defendant-appellant, defendant-appellant cannot be permitted to contend that he did not have knowledge of the agreement to sell executed by him.

Next argument of learned counsel for the defendant-appellant is that in fact this agreement to sell was not intended to be acted upon and it was only for the purpose of securing money.

This court has considered the argument, however, do not find any substance therein. The written agreement to sell is before a Court. The Court cannot overlook a written agreement duly signed by the parties. In the agreement to sell, it has written that the defendant-appellant shall get the sale deed executed by 30.06.2006. Hence, this Court does not find any

substance in the argument of learned senior counsel.

The last argument of learned counsel for the defendant-appellant is that the first appellate court has not discussed the finding recorded by the trial court and reversed the same.

This Court has carefully read the judgment passed by the learned first appellate court. The learned first appellate court has discussed each finding of the trial court to deny the relief of specific performance and after critically analyzing such finding of the trial court, reversed the same by giving cogent reasons. Learned first appellate court has also re-appreciated the evidence and returned a finding of fact. The court has also observed that the finding of the trial court is a result of misreading of evidence.

Still further, learned first appellate court while reversing the finding, culled out points for determination and after re-appreciating the evidence recorded a finding of fact.

No other point was addressed.

In view of what has been recorded hereinabove, there is no scope for interference in the findings of fact arrived at by the learned first appellate court. The regular second appeal is dismissed.

29th January, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No