

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

RSA No.3928 of 2015 (O&M)

Date of decision: 23.04.2018

Gurmukh Singh

..... Appellant

Versus

Paramjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Premjit Kalia, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court accepting the appeal and dismissing the suit for possession by way of specific performance of the agreement to sell. Learned First Appellate Court has given three reasons to set aside the decree of specific performance of the agreement to sell.

1. There is overwriting in the agreement to sell with respect to the target date for execution and registration of the sale deed.
2. Although as per the agreement to sell, the entire sale consideration has been paid, however, still the date for registration of the sale deed which is due to overwriting was fixed after a period of more than two years.
3. The possession of the land in dispute was delivered under the agreement to sell in favour of the plaintiff. However, the plaintiff still filed a suit for possession and sought possession. In the plaint, there are no pleadings when the possession was taken back from the plaintiff.

In the present case, the plaintiff propounds agreement to sell dated 13.12.2006. It is a total payment agreement. Original record was summoned. A bare look at the agreement to sell Ex.P-1 proves that the target date for execution and registration of the sale deed has been interpolated and figure '6' has been converted into '8' to prove that the target date for execution and registration of the sale deed is 22.12.2008. Attention of learned counsel for the appellant was also drawn to the aforesaid fact and he admits that the figure '8' is entirely different. On careful examination of the figure '8' with magnifying glass clearly shows that initially it was '6' and thereafter it was interpolated to '8'.

In the present case, defendant No.1 has not chosen to contest the suit. Defendant No.1 sold the property through registered sale deed in favour of defendant No.2 on 30.07.2007. Just to defeat the rights of defendant No.2, the suit has been filed and that is the reason why defendant No.1 has not chosen to contest and the target date for completion of the deal has been interpolated. Otherwise, there was no reason why after paying the entire sale consideration, the plaintiff waited for a period of two years.

Still further, there is no explanation as to when the plaintiff went out of possession. Although, in the agreement to sell Ex.P-1, it is recorded that the possession has been delivered whereas the plaintiff has prayed for decree of possession. Still further, the sale deed executed by defendant No.1 in favour of defendant No.2 also records that the possession has been given to defendant No.2.

In view of the aforesaid finding, this Court does not find any ground to interfere.

Learned counsel for the appellant has drawn attention of the

Court to observation made by the learned First Appellate Court that since the agreement to sell is not registered, therefore, it is not enforceable. This Court has carefully read the judgment passed by the learned First Appellate Court. The judgment passed by the learned First Appellate Court is not based entirely on the aforesaid basis. Only a passing observation has been made by the Court.

Learned counsel for the appellant although made a serious attempt to challenge the finding of the learned First Appellate Court, however, could not bring to the notice of the Court any misreading or non-reading of evidence. Learned First Appellate Court is a last Court for appreciation of evidence available on the file. In the present case, Learned First Appellate Court has appreciated the evidence in the proper prospective and have recorded a finding which is neither shown to be perverse nor result of misreading of evidence.

Hence, there is no scope for interference with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

23.04.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No