

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

RSA No.6471 of 2016 (O&M)

Date of decision:06.02.2018

Rajbir Yadav

... Appellant

Vs.

Satpal (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shailendra Jain, Senior Advocate with
Mr. Roopak Bansal, Advocate and
Mr. Satyendra Chauhan, Advocate
for the appellant.

AMIT RAWAL J.

C.M.No.16952-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 85 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.6471 of 2016 (O&M)

It has been stated that in compliance of order dated 13.07.2017, costs of ₹10,000/- has been deposited on 02.02.2018, whereas, office report might have been made in pre-lunch session.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit seeking specific performance of the agreement to sell dated 06.12.2005 vide which the land

in dispute agreed to be sold at the rate of ₹4,00,000/- per acre against the alleged payment of earnest money of ₹5,25,000/- has been dismissed by both the Courts below.

Before advertng to the arguments of Mr. Shailendra Jain, learned Senior counsel assisted by Mr. Roopak Bansal, Advocate for the appellant-plaintiff, it would be in the fitness of things to give factual background of the matter.

The agreement to sell aforementioned was allegedly executed by GPA Matadeen son of Daulat Ram, resident of village Rajiyaki, Tehsil and District Rewari with the plaintiff of his agricultural land comprised in khewat no.62, khatoni no.71 to 88, total kitta 87, total measuring 493 kanal 1 marla of its 4/112 share measuring 4 kanals 8 marlas and khewat no.61, khatoni no.69, kitta 34, total land measuring 205 kanal 8 of 1/112 share, i.e., 1 kanal 17 marlas, total land measuring 6 kanal 5 marlas situated within the revenue estate of village Badhrana, Tehsil Bawal, District Rewari on payment of ₹5,25,000/- to Matadeen by the plaintiff in the presence of the witness, namely Satya Narayan. The stipulated date for execution and registration of the sale deed was 16.01.2007 and the suit was filed on 23.03.2007. Pleadings further revealed that during the subsistence of the agreement to sell, vendor had sold the land to defendant No.2- Anshu Yadav, vide sale deed dated 17.04.2006 and therefore, necessity arose to challenge the aforesaid sale deed.

The respondent-defendant contested the suit on the premise that no such agreement was ever executed. It was a result of forgery and fabrication, much less no money was received. It was conspiracy to grab the property of the defendant. Matadeen had no right to execute any document in the shape of agreement to sell. The agreement to sell was neither on the regular stamp paper nor scribed by the regular deed writer. On the preponderance of the evidence, both the Courts below found that the appellant-plaintiff miserably failed to prove the execution of the agreement to sell, much less payment of earnest money and dismissed the suit.

Mr.Shailendra Jain, learned Senior counsel assisted by Mr. Roopak Bansal, Advocate for the appellant-plaintiff submitted that both the Courts below misconstrued the oral and documentary evidence, particularly the statements of attesting witnesses, Haripal - PW5 and PW3 - Satya Narayan. Satya Narayan categorically stated that the agreement to sell was executed in his presence through GPA Holder Matadeen of Satpal-vendor and earnest money of ₹5,25,000/- was paid in his presence. During the pendency of the suit, Matadeen had died and his son Haripal appeared as PW5 in the witness box, who stated that money was received by Matadeen and then proceeded further for execution and registration of the sale deed. The defendant did not lead any evidence to belie the signatures of the vendor or whether Matadeen GPA had any authority to execute the agreement to sell, though the plaintiff had complied with the provisions of Section 68 of Indian Evidence Act. There was no occasion for the Court

below to arrive at a finding that agreement to sell was forged and fabricated document, therefore, it has resulted into illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees, much less, record of the Courts below.

Satya Narayan-PW3 tendered the affidavit as PW3/A but when subjected to cross-examination stated that consideration of ₹5,25,000/- was not paid in his presence. Moreover, the agreement to sell had already been typed. He did not know Satpal, original owner or Matadeen, GPA Holder, nor did he know who had scribed the agreement to sell. On perusal of the agreement to sell, it surfaced that first page of the agreement to sell did not bear the signature of the vendor or vendee but only at the last page and attested by only one witness Satya Narayan. No stamp vendor has been examined from whom the alleged stamp papers of ₹5/- were purchased on 06.12.2005 to prove who had purchased them either Matadeen or Satpal, thus, there was no intention to sell the land. All these factors were required to be proved by the plaintiff to seek the discretionary relief under Section 20 of the Specific Relief Act, 1963. Having failed to do so, much less passing of the sale consideration, the Courts below even did not grant the alternative relief.

By referring to the aforementioned observations, I am of the view that findings of the Courts below are perfectly legal and justified which are based upon the appreciation of oral and documentary evidence on record. No other argument has been raised to enable this Court to form the

different opinion than the one arrived at and the judgments cannot be said to be faulted with.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

February 06, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No