

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

**RSA No.6698 of 2016 (O&M)
Date of Decision:05.12.2018**

Prithvi and others

...Appellant(s)

Versus

Yogesh Kumar

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate for the appellants.
Mr. Denesh Goyal, Advocate for the respondent.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for possession by way of specific performance of the agreement to sell dated 5.6.2008.

Earnest money of Rs.15,00,000/- is stated to have been paid at the time of execution of the agreement to sell and thereafter additional amount of Rs.20,00,000/- was paid on 28.11.2008 when the date was extended for execution and registration of the sale-deed from 30.11.2008 to 30.4.2009. Execution of the agreement to sell and receipt of earnest money is not in dispute.

Both the courts below, after appreciating the evidence, have decreed the suit.

Learned counsel for appellants has submitted that one of the defendant-appellant Prahlad had not signed the agreement to sell, therefore, there could not be any decree for specific performance of the agreement to sell against him.

This aspect has been examined at length by both the courts below.

Both the learned courts below have given following three reasons to reject the arguments of the learned counsel for the appellant as submitted:-

- (i) Defendant No.2 is son of defendant No.1 and brother of defendants No.3 and 4.
- (ii) Defendant No.2 has not filed any separate written statement rather he has filed a joint written statement along with defendants No.1, 3 and 4.
- (iii) When Prahlad (appellant) appeared in evidence, he admitted that he was present at the time when the agreement was being Scribbed, however, he left as he was to get tractor repaired.

The reasons which have been given by the learned trial court as well as by the learned first appellate court appear to be plausible. The agreement to sell is not mandatorily required to be in writing.

In the present case, father and his three sons had entered into an agreement to sell, of course, not signed by one of the son (appellant herein). No evidence has come on record that father has any interest adverse to the son Prahlad-appellant.

Next argument of the learned counsel for the appellant is to the effect that the plaintiff was not having sufficient amount for execution and registration of the sale-deed. It may be noticed that the plaintiff visited the office of Sub-Registrar and got his presence marked as also got an affidavit attested, wherein it was specifically recorded that he is ready and willing to perform his part of the contract. The suit was filed within one month from

the extended target date

for execution and registration of the sale-deed. Still further, the plaintiff in his plaint stated that he is ready and willing to perform his part of the contract. In evidence also, this fact has been reiterated. In such circumstances, readiness and willingness of the plaintiff is proved.

Last argument of the learned counsel for the appellant is to the effect that Prithvi was present on the date fixed for execution and registration of the sale-deed as per agreement to sell and his presence is not disputed by the witnesses produced by the plaintiff, hence defendants were also ready and willing to perform their part of the contract. There were four owners namely Prithvi, Prahlad, Prabhu and Ram Kumar. It is not in dispute that remaining were not present. Hence, no sale-deed could be executed in absence of others.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

05.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No