

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

RSA-4791-2014 (O&M)
Date of decision: 18.12.2018

DES RAJ

... Appellant

Versus

KARNAIL SINGH

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Puneet K. Bansal, Advocate
for the appellant.

Mr. Judgepreet S. Warring, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 29.11.2001 filed by the appellant/plaintiff was dismissed by the trial Court vide judgment and decree dated 03.06.2011. The appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge (ADJ-III), Ferozepur

In brief, case of the appellant/plaintiff is that the respondent/defendant agreed to sell land measuring 16 kanal, detailed in para 2 of the judgment of trial Court vide agreement to sell dated 29.11.2001 for sale consideration of Rs.1,60,000/- and received a sum of Rs.1,40,000/- as earnest money. The sale deed was agreed to be executed

on or before 15.05.2002. Possession of suit land was handed over to the appellant by the respondent. On the stipulated date, the appellant remained present in the office of Sub Registrar, Fazilka with balance sale consideration and expenses of registration etc. but the respondent did not turn up. He got attested an affidavit regarding his presence. The appellant always remained ready and willing to perform his part of agreement. On 03.02.2005, the respondent in presence of witnesses extended the period for sale deed to 15.06.2006. On 15.06.2006, the appellant remained present in the office of Sub Registrar, Fazilka to perform his part of the agreement but the respondent failed to come. Hence the suit.

The respondent/defendant filed the written statement and in turn, raised preliminary objections inter alia that the suit is not maintainable in the present form; the appellant has no locus standi to file the suit; the agreement is not a registered document; the suit has been filed beyond the period of limitation. On merits, the factum of execution of agreement to sell and so also terms and conditions stipulated therein were admitted. However, it was denied that plaintiff always remained ready and willing to perform his part of the agreement. The answering defendant never gave his consent for extension of date for execution and registration of sale deed. All other material averments of the plaint were denied with a prayer for dismissal of suit.

The appellant filed replication and reasserted his stand taken in the plaint.

The controversy between the parties led to framing of issues, reproduced in para 4 of the judgment of trial Court.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court dismissed the suit by rejecting plea of extension of date for execution of sale deed vide writing dated 03.02.2005 Ex.P6, therefore, the suit being barred by limitation. Another ground that weighed in the mind of trial Court is that agreement is an unregistered document, therefore, the same is not admissible in evidence by relying upon the judgment referred to in para 13 of the judgment.

The Court in appeal affirmed findings of the trial Court without any variance and as a result, appeal preferred by unsuccessful plaintiff/appellant was dismissed.

Counsel for the appellant would argue that the Courts have failed to appreciate testimony of Ramesh Kumar, a witness to writing dated 03.02.2005 in right perspective. It is argued that testimony of a witness is to be read as a whole and a single sentence from the testimony cannot be read in isolation as it would be against principles of interpretation of evidence and would lead to travesty of justice. It is further argued that Ramesh Kumar is not a witness to the agreement to sell dated 29.11.2001, therefore, his testimony that the agreement to sell Ex.P2 and writing dated 03.02.2005 Ex.P6 were executed on the same date would be of no consequence to deny the principal relief of specific performance of the agreement dated

29.11.2001 whereby the respondent had already received a substantial amount of Rs.1,40,000/- out of total sale consideration of Rs.1,60,000/-.

Counsel for the respondent/defendant has supported judgments passed by the Courts with the submissions that concurrent findings of fact are not amenable to challenge in the second appeal unless they suffer from perversity or raise a question of law for determination. It is further argued that in the second appeal, the Court cannot re-appreciate the evidence and interfere in consistent findings merely because another view is possible. He would apprise the Court that not only Ramesh Kumar but even Sushil Kumar Lambardar, an attesting witness to agreement Ex.P2 has deposed that signatures on Exs.P2 and P6 were made on 29.11.2001, the date on which agreement to sell was executed, sufficient to falsify and belie plea of the appellant that time for execution of sale deed was extended vide writing dated 03.02.2005, therefore, findings of the Courts that suit is barred by limitation are liable to be affirmed.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that agreement to sell dated 29.11.2001 was executed between the parties for sale of land measuring 16 kanal for consideration of Rs.1,60,000/- out of which an amount of Rs.1,40,000/- was paid towards earnest money. The sale deed was agreed to be executed on 15.05.2002 but on that day, no sale deed was executed between the parties. The plea of the appellant is that he

was present in the office of Sub Registrar, Fazilka on the stipulated date but the respondent did not turn up to perform his part of the agreement. Another plea raised by the appellant is that on 03.02.2005, time for execution of sale deed was extended to 15.06.2006 vide writing Ex.P6.

The respondent/defendant has denied the factum of extension of time for execution of sale deed with the plea that his signatures on back of the stamp paper might have been used to procure this extension by way of writing dated 03.02.2005.

To prove extension of time, the appellant examined one of the attesting witnesses namely Ramesh Kumar PW7. He tendered into evidence his duly sworn affidavit Ex.PW7/A by way of examination in chief and supported cause of the appellant. However, in his cross examination, he has contradicted his stand by saying that writing of extension was scribed by Om Parkash Sandha, petition writer as against his statement in examination in chief that the typist scribed the writing. Another vital admission of the witness is that documents Exs.P2 and P6 were scribed on the same day. Meaning thereby that both the writings were prepared in November, 2001. Not only Ramesh Kumar, Sushil Kumar Lambardar PW6 an attesting witness to the agreement of sale has corroborated statement of Ramesh Kumar that signatures on documents Exs.P2 and P6 were made on 29.11.2001. A relevant extract from testimony of Sushil Kumar Lambardar reads as follows:-

I have seen the signatures of Karnail Singh over Ex.P2

page No.3 which were made in my presence. It is correct that Des Raj also signed on the same day when Karnail Singh made his signatures on Exs.P2 and P6. On the signatures over Exs.P2 and P6 were made on 29.11.2001.

Taking into consideration the facts elicited in cross examination of Sushil Kumar Lambardar, an attesting witness to the agreement of sale and Ramesh Kumar an attesting witness of the writing Ex.P6 coupled with plea in defence raised by the respondent, the Courts have rightly held that no such writing was executed by Karnail Singh on 03.02.2005 extending time for execution of sale deed, therefore, suit filed by the appellant/plaintiff seeking specific performance of agreement of November, 2001 in November, 2006 is clearly barred by limitation. In this view of the matter, findings of the Courts in respect of writing dated 03.02.2005 Ex.P6 and on the question of limitation are liable to be affirmed and ordered accordingly.

So far as findings of the Courts that the agreement to sell is not admissible in evidence for want of registration, the same cannot be upheld in the light of Division Bench judgment of this Court **Ram Kishan and another Vs. Bijender Mann @ Vijender Mann and others, 2013(2) RCR (Civil) 419**. An agreement of sale does not require registration for filing a suit for specific performance but in case the agreement to sell is not registered, plea of part performance on the basis of such an agreement is not available keeping in view the amendment of Section 53-A of the Transfer of Property Act, Sections 17 and 49 of the Registration Act in the

year 2001. In this view of the matter, findings of the Courts with regard to agreement being not admissible in evidence for want of registration are set aside.

In view of what has been discussed hereinabove, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

18.12.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No