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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5284-2014 (O&M)
Date of decision : 27.03.2018

Kailash Devi

... Appellant(s)

Versus

Vinod Sharma

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.D. Yadav, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

In pursuance to the order dated 24.10.2017, learned counsel for the appellant has deposited the costs and handed over the receipt of the same, which is taken on record.

CM-12472-C-2014

Deficiency of the Court fee has been made good.

C.M. stands disposed of.

CM-12473-C-2014

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 47 days in re-filing the appeal is condoned.

RSA-5284-2014

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of agreement to sell

dated 15.07.2005 has been decreed by the trial Court vide judgment and decree dated 22.11.2013 and affirmed by the lower Appellate Court vide judgment and decree dated 02.05.2014.

The respondent-plaintiff instituted the suit seeking specific performance of agreement to sell *ibid* in respect of land measuring 2 kanals 2 marlas agreed to be sold for a total sale consideration of ₹63,000/-. It was averred that the entire amount of consideration was paid at the time and the possession was also taken. The respondent-plaintiff had always been ready and willing to perform the part of the agreement to sell. The suit was preceded by legal notice dated 05.06.2008 and in that aspect of the matter, an occasion arose to file the suit.

The aforementioned suit was contested by the appellant-defendant on the premise that Chetan, the alleged vendor, son of the defendant, had never entered into an agreement to sell in respect of agriculture land, which was only source of earning and therefore, the suit was liable to be dismissed. The service of legal notice was denied, but the legal notice dated 03.02.2007 was admitted, which was stated to have been different from the previous notice.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the defendant entered into an agreement to sell the suit land on 15.07.2005? OPP*
2. *Whether the plaintiff remained ready and willing to perform his part of the contract? OPP*
3. *Whether the plaintiff is entitled to the relief of specific performance of agreement in question? OPP*
4. *Whether the suit of the plaintiff is not maintainable? OPD*

5. *Whether the plaintiff has no locus standi to file the present suit? OPD*
6. *Whether the plaintiff has no cause of action to file the present suit? OPD*
7. *Whether suit is bad for non-joinder and misjoinder of necessary parties? OPD*
8. *Relief.*

The respondent-plaintiff examined Angad Singh as PW1, Mahesh Kumar as PW-2, Vinod Sharma as PW-3 and tendered in evidence documents (Ex.P1 to Ex.P7), whereas the defendant examined Vishal Singh Chauhan as DW-1, Kailash Devi as DW-2 and tendered the document Mark-A.

The trial Court on the basis of the preponderance of the evidence, decreed the suit on the ground that the appellant-defendant failed to belie the signatures of Chetan or his majority at the time of the execution of the agreement to sell by declining the aforementioned plea of the appellant. The appeal preferred thereto before the lower Appellate Court also met with the same fate.

Mr. Yadav, learned counsel appearing on behalf of the appellant-defendant submitted that great hardship had been caused to the appellant-defendant, who is only surviving legal representative of the son, who was unmarried and the suit land was only the source of earning. The readiness and willingness was wanting as the suit was filed before the limitation could expire i.e. the last date, therefore, the discretionary relief under Section 20 of the Specific Relief Act, could not have been granted. The execution of the agreement to sell has not been proved through the testimony of the attesting witnesses, but the Court in routine manner, had

granted the discretion. The discretionary relief can only be granted in rarest of rare case, but not in a rote manner, thus, urges this Court for setting aside the concurrent findings, under challenge.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Yadav, for, the attesting witnesses referred to above had despite cross-examination been consistent and coherent. Nothing contrary surfaced to bring suspicion in the mind of the Courts below for denying the discretionary relief. The respondent-plaintiff did not claim the possession as the contents of the agreement to sell revealed that the entire sale consideration had been paid and in lieu thereof, the possession was handed over. The appellant-defendant had also not been able to place on record any evidence with regard to the possession of the suit property. Had it been so, there was no impediment to place on record any documentary evidence. Both the witnesses have also proved the passing of the consideration of ₹63,000/-. If at all the agreement to sell was not executed, the subsequent notice of February 2007 alleged to have been received by the appellant-defendant, could have been rebutted. The defence taken in the written statement is an afterthought. Even otherwise, the defendant cannot take up the plea of readiness and willingness in view of the fact the agreement to sell has been denied. The aforementioned view of mine is reiterated from the judgment rendered by this Court in **“Jora Singh V/s Lakhwinder Kumar and other” 2011 (1) RCR (Civil) 130** and **“Lal Chand V/s Tek Chand” 2013 (5) RCR (Civil) 104.**

For the foregoing reasons, I do not find any illegality and

perversity in the judgments and decrees rendered by the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

27.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No