

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

**RSA No.5450 of 2017 (O&M)
Date of Decision:09.08.2018**

Prtitam Singh and anr.

.....Appellants

Vs

Karan Garg

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vijay Rana, Advocate for
Mr. Abhisek Arora, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendants have preferred this Regular Second Appeal against concurrent judgments and decrees passed by the Courts below in a suit for specific performance of agreement to sell dated 13.11.2006 and for permanent injunction.

[2]. Brief facts of the case are that the plaintiff filed a suit for specific performance on the basis of agreement to sell dated 13.11.2006 and for permanent injunction restraining the defendants from alienating the suit property in any manner to any other person except the plaintiff. It was also alleged by the plaintiff that the defendants were the co-sharers to the extent of

half share in house measuring 8 *Biswas* and were in exclusive possession of house measuring 4 *Biswas* (34' x 53') consisting of three rooms, three shops, kitchen and bathroom etc. The defendants entered into an agreement to sell dated 13.11.2006 for a consideration of Rs.9 lakhs and received an amount of Rs.2 lakhs as earnest money. The date for execution of sale deed was fixed on or before 30.07.2007. The registration charges were to be born by the plaintiff and the remaining sale consideration was to be paid at the time of registration of the sale deed. The possession was held to be delivered after the execution of sale deed.

[3]. Plaintiff further alleged that on the target date, he remained present in the office of Sub-Registrar, Dhuri on 30.07.2007 along with remaining sale consideration and registration charges, but the defendants did not come present to perform their part of obligation. Plaintiff always remained ready and willing to perform his part of contract. Thereafter defendants started threatening to alienate the suit property. Earlier the plaintiff filed a suit for permanent injunction in which *ad interim* injunction was granted when the defendants refused to executed the sale deed. That is how the suit came to be filed before the trial Court.

[4]. The suit was contested by the defendants on number of

grounds. It was pleaded that the defendants borrowed a sum of Rs.2 lakhs from the plaintiff and executed the agreement to sell dated 13.11.2006 as collateral security. They did not intend to execute the aforesaid agreement as the value of the property was more than Rs.30 lakhs.

[5]. After filing of the replication, both the parties went to trial on the following issues:-

- “1. Whether the defendants entered into an agreement to sell dated November 13, 2006 with the plaintiff for sale of the suit property for consideration of Rs.9,00,000/- and received Rs.2,00,000/- as earnest money in the presence of the witnesses? OPP
2. Whether the plaintiff always remained ready and willing to get the sale deed executed as per terms of the agreement to sell dated November 13, 2006?OPP
3. Whether the plaintiff is entitled to the relief of possession by way of specific performance of the agreement to sell dated November 13, 2006? OPP
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is not legally maintainable in the present form? OPD
- 5-A. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
6. Relief.”

[6]. Both the parties led their respective evidence in order

to prove their case.

[7]. The trial Court after consideration of evidence decreed the suit by holding that execution of agreement to sell is proved and the agreement is not proved to be security document. The defendants could not lead any evidence with regard to market value of the property as alleged.

[8]. The decree passed by the trial Court was affirmed by the lower Appellate Court.

[9]. Learned counsel for the appellants sought to argue the appeal on the following legal parameters as mentioned in para No.14 of grounds of appeal:-

- “a) Whether the learned Courts below have erred in not properly appreciating the oral as well as documentary evidence available on record?*
- b) Whether there is total misreading of facts and evidence by the learned Courts below while ignoring the material and relevant piece of documentary evidence which is serious error in law vitiating effect on the finding?*
- c) Whether the judgments and decrees passed by the learned Courts below are perverse?*

[10]. I have considered the submissions made by learned counsel for the appellants.

[11]. Perusal of the record would show that the execution of agreement to sell was proved with reference to witnesses.

Milakh Raj appeared as PW-2 and tendered his affidavit Ex.PW-2/A. He identified his signatures on the agreement to sell dated 13.11.2006 Ex.P-1. He supported the case of the plaintiff and the requirement in terms of expression '*animo attestandi*' which is basic feature in testamentary depositions is fulfilled. The witness also admitted that Sandeep Bansal also signed the agreement as a marginal witness. The cross-examination of the marginal witness did not yield any incriminating evidence in favour of the defendants.

[12]. The execution of agreement to sell was proved and the same was even admitted by the defendants in the written statement. Passing of consideration to the tune of Rs.2 lakhs was also admitted, but in the form of loan to which agreement was created as a security document. The defendants could not lead any such evidence that agreement to sell was executed as a security document to the loan transaction, nor the defendants could prove the market value of the loan in question to be more than Rs.30 lakhs at the time of execution of agreement.

[13]. The readiness and willingness on the part of the plaintiff was proved on record as he remained present before the Sub-Registrar as per Ex.P-2. The suit was filed within limitation. Except the written statement, the defendants have miserably failed to bring on record any such incriminating evidence so as

to dispel lawful execution of agreement to sell.

[14]. The questions of law as framed by learned counsel did not arise at all. The impugned judgments and decrees are not the result of misreading of evidence. The question No.a) does not arise at all. The evidence has not been misread by the Courts below in any manner. The testimony of PW-2 would show that the execution of agreement to sell was lawfully proved. The question No.(b) also does not arise. Since the Courts below have appreciated the evidence on record in a lawful manner, therefore, there is no question of perversity in the approach of the Courts below. No law point worth cognizance is involved in the present appeal.

[15]. Before parting with the order, I find that an application for condonation of delay of 1555 days has been filed. Since the appeal is dismissed on merits, therefore, there is no necessity of passing any order in the application for condonation of delay. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed in *limine*.

August 09, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No