

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

RSA No.6248 of 2017 (O&M)

Date of Decision:29.01.2018

Hare Kishan

....Appellant

Versus

Prem Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. K. K. Kaul, Advocate
for the appellant.

G.S. SANDHAWALIA, J. (ORAL)

CM-16292-C-2017:

Application for exemption from filing certified copy of Annexures and judgment dated 17.08.2017 passed by learned ADJ, Palwal is allowed, in view of the averments made in the application, duly supported by affidavit.

CM stands disposed of.

CM-16294-C-2017:

Application under Section 5 of the Limitation Act for condonation of delay of 2 days in filing the present appeal has been filed.

In view of the averments made, duly supported by affidavit, the delay is condoned.

CM stands disposed of.

RSA No.6248 of 2017:

The defendant has filed appeal against the concurrent findings of the Courts below whereby the suit for possession by way of specific performance of contract has been decreed against him regarding 10 Kanals

13 Marlas, in view of the agreement in question dated 29.08.2011.

It is the case of the respondent-plaintiff that he had entered into contract of sale of agricultural land for total sale consideration of Rs.67,00,000/- and when he reached the office of Sub-Registrar, Palwal on 28.10.2011 for performing his part of the agreement of sale along with balance sale consideration of Rs.5,00,000/-, the defendant did not come. Resultantly, the suit was filed two months later on 23.12.2011 on the ground that appellant-defendant has failed to perform his part of contract to execute the sale deed in question.

The defence of the defendant was that he had not executed the agreement to sell and the receipt of agreement money had not been signed by him and it is forged and a fabricated one. Further it is alleged that plaintiff is doing business of chit fund and having office in Palwal. Earlier also two agreements in respect of two plots in favour of the plaintiff were got executed and the plaintiff had been on visiting terms with the defendant. One Kapil Bansal had started business of chit fund with the plaintiff-respondent and he was missing since 28.06.2011. Upon pressure on the appellant on the basis of same liability of said Kapil Bansal, responsibility has been fixed upon the appellant and therefore, the agreement had been procured. The trial Court framed the following issues:

1. *Whether the defendant entered into an agreement to sell dated 29.8.2011 with the plaintiff regarding the suit land ? OPP*
2. *Whether the plaintiff has always been and and is still ready and willing to perform his part of agreement? OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no locus standi to file the present suit? OPD*

5. *Whether the plaintiff has no cause of action against the defendant? OPD*

6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

7. *Relief.*

Evidence was adduced by the respondent-plaintiff including of the handwriting expert and one of the attesting witnesses Rambir as PW2 along with the scribe Yashpal Sharma as PW1. The plaintiff had appeared himself as PW3.

Appellant examined himself and also proved the agreement dated 21.02.2011 (Ex.D1) and 22.02.2011 (Ex.D2) and examined one witness namely Kanhiya Lal also as DW2. Keeping in view the facts that agreement of sale had been proved by stamp vendor, scribe and the attesting witnesses and the fact that part of money has been arranged from one of the witness namely Rambir who had paid Rs.31 lakh, the trial Court held that the appellant is not illiterate person and LLB pass and he had put the signatures on Ex.P1 and Ex.P2 which were the agreement and the receipt. Therefore, it came to the conclusion that the agreement to sell had been entered between the parties and decided the issue in favour of the respondent-plaintiff and similarly regarding the issue No.2 it was held that the plaintiff was ready and willing to perform his duty. Issue Nos.3 to 6 were not pressed. After taking into consideration the facts that the stamp paper had been purchased by the appellant himself the trial Court decreed the suit.

Counsel for the appellant has argued that there was already some other agreements between the parties and the witness was personally involved, therefore, the agreement should not have been enforced by the

Courts below.

As noticed, the stand of the appellant in the written statement was that he had not entered into agreement and not executed the agreement to sell. In order to dispel the stand, the handwriting expert was also examined as PW4 and his initial stand was dispelled that the disputed agreement had been signed by the appellant himself. It has also been recorded by the trial Court that even the stamp vendor deposed that the agreement was prepared and stamp papers were sold by him by incorporating entries in the register and that the appellant himself purchased the stamp papers against the endorsement. Thus, it cannot be said that the document were procured in the form of security.

The appellate Court has also recorded that the appellant-defendant is LLB pass and though has not been practicing but doing agricultural activities and therefore, he can not take the stand that he signed the blank papers. The appellate Court has also recorded that it has seen the document and come to the conclusion that same was computer printed.

It is not the case, that the blank documents have been wrongly utilized. The defence is also that one Kapil Bansal's liability as such was being secured and the fact remains that earlier also there were agreements inter-se between the parties and therefore there are several transactions between the appellant and the respondent-plaintiff. Thus it cannot be said that there has been any such fraud played with the appellant. He signed the agreement with the open eyes and received the amount and now cannot back out from his liability and cannot submit that it was by way of security. The plaintiff had approached the Sub-Registrar and filed the suit expeditiously within 2 months, thus it cannot be held that the money had not been

returned which led to the filing of the suit. Even otherwise the last date was 28.10.2011, and only 2 months time had been given to execute the sale deed. If the amount was given on loan the time period would have been much longer. The fact that the amount was sought to be recovered which had been given on loan cannot be accepted once the initial stand was that he had not entered into agreement which had been dispelled. The concurrent findings as such do not suffer from any infirmity which would convince this Court to interfere.

Accordingly, appeal is dismissed, in limine.

(G.S. SANDHAWALIA)
JUDGE

29.01.2018
pvd/raman

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