

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2465 of 2000 (O&M)

Date of decision: 11.01.2019

Kashmir Singh etc.

..... Appellants

Versus

Gurdial Singh etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.D. Sharma, Sr. Advocate with
Mr. Ved Priya Malik, Advocate
for the appellants.

Mr. Ashwani K. Chopra, Sr. Advocate with
Mr. Akshit Chaudhary, Advocate
for respondents No.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court resulting into decree for possession by way of specific performance of the agreement to sell dated 30.09.1986.

The detail facts have already been noticed by the Courts below. However, to complete the narration, some facts are being noticed.

Plaintiffs who are three in number filed a suit for specific performance of the agreement to sell dated 30.09.1986 through which the land situated in two different villages namely village Bhattian and village Bhundewal was agreed to be sold. In the agreement to sell dated 30.09.1986 with respect to the land situated in village Bhattian, it was mentioned that the land is comprised in Khata No.20-21, Khatoni No.45-46 measuring 15 kanals 18 marlas being half share of 31 kanals and 16 marlas. With respect to the

land situated in village Bhundewal, it was identified by Khata Nos.18-21, Khatoni Nos.49-50-53 measuring 44 kanals 7 marlas out of joint khewat measuring 118 kanals and 7 marlas. As per the agreement, the target date for execution and registration of the sale deed was fixed as 29.12.1986. On 29.12.1986, another writing was executed, of course only by Kashmir Singh- defendant No.1, out of two brothers extending the date for execution of the sale deed to 13.01.1987 i.e. for a period of approximately 15 days. On 13.01.1987, another writing was executed which was signed by both the brothers and the date was extended by 10 days to 23.01.1987.

The suit for specific performance was filed on 23.01.1990 as per the signatures of the Senior Sub-Judge on the plaint. It will be noted that the date of institution by the trial Court had been wrongly noted as 24.01.1990.

The defendants contested the suit admitted execution of the agreement to sell as well as payment of earnest money. However, it was pleaded that since description of the land has not been given, therefore, the agreement is void being uncertain. It was further pleaded that the plaintiffs did not have money to pay the balance sale consideration and therefore, the time was extended. It was further pleaded that one of the brother has not signed the writing extending the target date for execution and registration of the sale deed.

Learned trial Court dismissed the suit while recording the following findings:-

1. Since the time has been extended number of times, therefore, it must be assumed that the plaintiffs were not having sufficient funds to pay the balance sale consideration.

2. The agreement dated 29.12.1986 is tempered with, in connivance with the scribe.

3. The detail of the land has not been mentioned in the agreement to sell.

4. Defendant No.2 is proved to be ready and willing whereas plaintiffs are not ready and willing.

Learned First Appellate Court after re-appreciating the evidence reversed the judgment of the trial Court and granted the decree for possession by way of specific performance of the agreement to sell. The Court noticed that none of the defendants had in fact visited the office of the Sub-Registrar where sale deed was to be executed. The Court further noticed that the defendants have not appeared in evidence. The Court further noticed that the original agreement to sell dated 30.09.1986 thus contain the particulars of the land agreed to be sold. The Court further found that the plaintiffs had appeared for the Sub-Registrar on 13.01.1987, the agreed date for execution and registration of the sale deed and got their presence marked and it was specifically asserted that on 13.01.1987, they were possessed of sufficient amount for payment of the balance sale consideration and the stamp duty.

This Court has heard learned senior counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel appearing for the appellants has submitted that the agreement to sell is defective and uncertain as the land has not been identified by khasra numbers and therefore, the decree for specific performance could not be passed. He has further referred to the agreement to sell and the decree passed and has submitted that in the agreement to sell, with respect to village Bhattian, Khata No.22 is not part of the agreement.

Similarly, he has submitted that Khatoni No.47 is also not part of the agreement to sell. However, when asked to learned counsel to point out, he

failed to show from the judgments of the Courts below that whether any submission in this regard made before the Courts. This fact is based upon appreciation of evidence and cannot be permitted to be raised for the first time. Still further, execution of the agreement to sell and payment of earnest money is admitted. It is not the case of the defendants-appellants that they are owners of some other land comprised in some other khasra numbers instead of Khata No.22 or Khatoni No.47.

Next argument of learned senior counsel for the appellants is that the defendants were not owners of the property on the day they executed the agreement to sell. In this respect, it must be noticed that in para 1 of the plaint, the plaintiffs had pleaded that the defendants are owner of the land in suit and they had entered into an agreement to sell. In the written statement, defendants admitted this fact that they are owners of the suit land. In such circumstances, learned senior counsel cannot be permitted to make out a new case in favour of the defendants-appellants.

In view thereof, there is no ground to interfere.

Appeal is dismissed.

The pending application, if any, shall stand disposed of.

While dismissing the appeal, this Court is of the considered opinion that since considerable time has passed and the amount of balance sale consideration has remained with the plaintiffs, therefore, the balance sale consideration shall be payable with 10% interest per annum from the date of institution of the suit till payment.

11.01.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No