

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4373 of 2006 (O&M)
Date of Decision:06.03.2019

Nasru and others

...Appellant(s)

Versus

Abdul Majid

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellants.
Ms.Bhagyashri, Advocate for
Mr.Vinod S. Bhardwaj, Advocate for the respondent.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while decreeing the suit for specific performance of the agreement to sell dated 22.9.1997.

At the time of admission, following substantial question of law was framed by this Court:-

“Whether the finding recorded by the Courts below that the agreement Exhibit P-1 is proved to be executed by playing fraud and misrepresentation, is sustainable?”

Since counsel for the appellants has not come forward, therefore, after going through the file, this Court is of the considered view that the aforesaid substantial question of law does not arise.

The execution of the agreement to sell, payment of earnest money and the plaintiff being ready and willing to perform his part of the contract, being finding of fact, do not require any interference. However,

both the courts below have failed to examine as to whether the plaintiff is entitled to discretionary relief of specific performance of the agreement to sell or not. After evaluating the evidence, this Court is of the view that the plaintiff-respondent is not entitled to specific performance of the agreement to sell for the following reasons:-

1. As per agreement to sell dated 22.09.1997, Rs.2,20,000/- was paid as earnest money out of total sale consideration of Rs.2,35,000/-. The target date for execution and registration of sale-deed was 1.9.1998. The plaintiff claimed that he visited the office of Sub Registrar on 01.09.1998. Thereafter, he requested the defendants to perform their part of the contract but they did not agree and delayed. The defendants finally refused on 25.08.2001. There is no explanation as to why the plaintiff waited for whole three years before filing the suit. The plaint is dated 29.08.2001, which is exactly one day short of three years.

2. The defendants have pleaded that Fateh Mohd., an attesting witness of the agreement to sell, is in fact a money lender and the defendants had been borrowing the money from him. It has been pointed out that in the year 1997, Rs.50,000/- was borrowed and thumb impressions were taken on some blank papers and thereafter agreement to sell was got scribed on 13.03.1997. On refund of the loan, the agreement to sell was cancelled. It has further been pleaded that again loan of Rs.75,000/- was taken and similar agreement to sell was executed as security document on 17.06.1997 and agreement to sell was cancelled after returning the amount.

When the plaintiff appeared in evidence, he was given suggestion that the plaintiff and Fateh Mohd. are jointly doing the business

of property dealing with the business of money lending which, of course, was denied. However, when Fateh Mohd. appeared as a witness as PW-2, he was asked questions with regard to his having got entered similar agreements to sell from the defendants when they took loan from him, he denied those facts. However, the entry of the agreement to sell in the register of the Scribe has been proved through examination of DW-1 Jagdish Parshad. The Scribe had stated that Fateh Mohd. had got scribed agreement to sell from the defendants. Ex.D1 and Ex.D2 are copies of the register entries, produced by Shri Jagdish Parshad. No suggestion was given to him by the counsel for the plaintiff that the register does not bear the signatures of Fateh Mohd. Ex.D1 is entry dated 13.03.1997 proving agreement to sell by the plaintiffs in favour of Mohd. Umar, Fateh Mohd and Jan Mohd, sons of Hurmat. Ex.D2 is entry dated 17.06.1997 with respect to an agreement to sell by the defendants-appellants in favour of Fateh Mohd. son of Hurmat.

3. The plaintiff, for getting his presence noticed before the Sub Registrar on 01.09.1998, did not even get a notice issued calling upon the defendants to come and execute the sale-deed. Although, the plaintiff is alleged to have paid more than 90% of the amount of sale consideration.

4. The difference between the date of execution of the agreement to sell and the target date is also almost one year.

5. Both the courts have failed to examine as to whether in such circumstances, the plaintiff-respondent is entitled to a decree for specific performance of the agreement to sell or not.

In view of the above, the appeal is partly allowed. The decree

for specific performance of the agreement to sell is substituted with a decree for refund of the earnest amount along with interest @ 12% per annum from the date of institution of the suit till payment. Pending application(s), if any, shall also stand disposed of, in terms thereof.

06.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No