

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

RSA No.3260 of 2013
Date of decision :14.3.2019

Dilpreet Kaur

.....Appellant

Versus

Tarlok Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Keshav Partap Singh, Advocate for the
appellant.

Ms.Divya, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell dated 31.5.2006.

The defendant-appellant contested the suit pleading that there was no agreement to sell and the plaintiff is working as a Commission Agent and in fact, the agreement to sell was a security document to secure a loan.

Both the Courts below on appreciation of evidence, have found that the defendant failed to prove

dealings with the plaintiff as he could not place on record any evidence that he was selling his crop through the shop of the plaintiff.

It will be noted that the agreement to sell is dated 31.5.2006, whereas, the sale deed was to be executed and registered on 30.6.2006, i.e. within one month. Keeping in view the aforesaid facts, the Courts have found that the defendant has failed to substantiate his plea of loan transaction.

Learned counsel appearing for the appellant has submitted that this is the only land available with the defendant and it would be very harsh if the decree passed by the Courts below is upheld.

On the other hand, learned counsel appearing for the respondent-plaintiff has submitted that there was no pleadings of agreement to sell giving any unfair advantage to the plaintiff. She has further submitted that before the Courts below, the arguments with regard to specific performance of the agreement to sell would have cascading effect.

This Court has considered the submissions. However, find no substance in arguments of learned counsel

for the appellant because the defendant failed to prove his case with regard to loan transaction. With regard to harshness, the defendant was required to lay foundation in his pleadings and thereafter, support their plea by leading evidence. As rightly contended, in fact, before the Courts below, no contention to this effect was pressed.

Learned counsel for the appellant has further submitted that the plaintiff has failed to prove his readiness and willingness to perform his part of contract. In this regard, it will be noted that on 30.6.2006, i.e. the target date for execution and registration of the sale deed, the plaintiff went to the office of Sub Registrar where sale deed was to be executed and registered. In token of his presence, he got attested an affidavit, wherein it was recorded that the plaintiff is ready and willing to perform his part of contract. Still further, the suit was filed within 32 days from the target date i.e. 2.8.2006. Therefore, the plaintiff promptly took steps for enforcement of the contract. Further argument of learned counsel for the appellant that the affidavit dated 30.6.2006 has not been proved is to be noticed and rejected because the affidavit is attested by the Executive Magistrate and the plaintiff when appeared in the evidence has made

statement to that effect. There is no counter evidence to prove or establish that the said affidavit was not got attested. It is not the case of the defendant that he was ready to perform his part of the contract and went to the office of Sub Registrar on 30.6.2006.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Dismissed.

March 14, 2019
KD

(ANIL KSHETARPAL)
JUDGE

Whether speaking / reasoned: Yes / No

Whether Reportable: Yes / No