

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

Date of decision: 14.03.2019

1. RSA No.2643 of 2016 (O&M)

Amrish Kumar

..... Appellant

Versus

Raman Kanta and others

..... Respondents

2. RSA No.6605 of 2016 (O&M)

Raman Kanta

..... Appellant

Versus

Amrish Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate
for the appellant (in RSA-2643-2016).
for respondent No.1 (in RSA-6605-2016).

Mr. Animesh Sharma, Advocate
for the appellant (in RSA-6605-2016).
for respondent No.1 (in RSA-2643-2016).

Mr. Pawan Kumar, Sr. Advocate with
Mr. Rohit Kumar, Advocate
for respondents No.4 and 5 (in both cases).

ANIL KSHETARPAL, J. (ORAL)

CM-7080-81-C-2016 in RSA-2643-2016

Both the applications are allowed and the delay in filing/re-
filing the appeal are condoned.

CM-17270-C-2016 in RSA-6605-2016

Application is allowed and the delay in filing the appeal is condoned.

Main Cases

Vide this judgment, I shall be disposing of two appeals bearing RSA No.2643 of 2016 and RSA No.6605 of 2016 as both are connected. Counsel for the parties are also agreed that both the cases can be conveniently disposed of by a common judgment. Plaintiff as well as defendant No.1 are aggrieved of judgments passed by the Courts below.

It will be noted that the plaintiff and defendant No.1 who are appellants in two different appeals are mother and son. The son filed a suit for specific performance of the agreement to sell against his mother with respect to agreement to sell dated 07.10.2003. Both the Courts on appreciation of evidence have found that the plaintiff is only entitled to refund of the earnest money along with interest but not specific performance of the agreement to sell. The Court has recorded following reasons for declining the relief of specific performance:-

1. The conduct of the plaintiff is not above board. He, after having obtained injunction, order did not bring into the notice of the revenue authorities so that there is information to every one with regard to injunction on alienation. Smt. Raman Kanta sold the property through registered sale deed dated 17.02.2004 whereas the suit was filed on 07.02.2004.

2. There is no reason forthcoming as to why the plaintiff did not get the sale deed registered on the date agreement to sell was executed, although, it has come in evidence that the plaintiff was having funds to get

the sale deed registered.

3. Although, plaintiff claimed that he was put in possession but he has failed to prove that.

4. The stamp paper on which the alleged agreement to sell is executed was purchased for executing a Power of Attorney and it was never purchased for execution of the agreement to sell. It will be noted that non-judicial stamp paper is issued by the stamp vendor for a specific purpose disclosed at the time of purchase.

5. The defendants No.2 to 5, who are not related to the family, were not in knowledge of pendency of the suit or the fact that there is an agreement to sell by the mother in favour of the son.

On the other hand, counsel representing the son-plaintiff has submitted that there is error in recording his statement wherein it has been noted by the Court that he was having Rs.1,00,000/- in his bank account. He has submitted that inadvertently, the word “not” has not been mentioned. He has further submitted that the defendant had filed an application for summoning the bank official along with the concerned record but then given up. He further submitted that the stamp paper was purchased by the mother and therefore, he does not know as to why she purchased the stamp paper for execution of Power of Attorney and not for agreement to sell.

This Court has considered the submission, however, find no substance therein. The statement of the plaintiff has been read in open Court. It has been specifically admitted by the plaintiff that he was having Rs.1,00,000/- in his account. No application was moved before the trial Court for correcting the statement. Still further, the agreement to sell was executed admittedly on stamp papers which were purchased for execution of

the Power of Attorney. Keeping in view the relationship between the plaintiff and defendant No.1 and while noticing that the remaining defendants are stranger, the Courts below have exercised a discretion in a particular manner.

As regards argument of learned counsel that possession of the plaintiff is admitted, is clearly misreading of evidence. The defendants-respondents have pleaded that they were delivered possession and they have also raised construction thereon.

As regards appeal filed by the mother, it will be noticed that payment of amount has been proved as the plaintiff had withdrawn the amount from the bank and paid it to the mother. Still further, she also executed an affidavit on 27.10.2003 admitting receipt of the money.

In view thereof, there is no ground to interfere with the discretion exercised.

Hence, both the appeals are dismissed.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

14.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No