

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

RSA No.6586 of 2016 (O&M)

Date of decision:17.01.2019

Aji Ram and another

... Appellants

Vs.

Murat Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Singla, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law whereby appellant-defendants have not been successful in defending the suit for specific performance of the agreement to sell dated 1.9.2006 in respect of suit land agreed to be sold for a total sale consideration of Rs.2,95,000/- against the payment of Rs.50,000/- as earnest money. The target date for execution and registration of the sale deed was fixed as 27.09.2006.

It was averred that plaintiffs were ready and willing to perform their part of the contract. The defendants contested the suit and denied the execution of the agreement to sell and stated that they had already entered into agreement to sell dated 21.8.2006 with defendant no.2 for a total sale consideration of Rs.2,96,500/- against the payment of earnest money of Rs.2,00,000/- and remaining consideration of Rs.96,500/- shall be paid on

14.09.2006. As regards the receipt of Rs.50,000/-, it was stated to be loan transaction. Defendant no.2 claimed himself to be a bonafide purchaser vide sale deed dated 27.9.2006.

The plaintiffs in support of the averments, examined Uday Chand, Advocate as PW1, Mahavir Singh Bhati, stamp vendor PW2, Narender Kumar as PW3, Dr. Satya Dev Aggarwal, Handwriting and Finger Expert as PW4 and plaintiff no.1 himself as PW5 and relied upon documents Ex.P1 to Ex.P5.

On the other hand, defendants examined Rohtash Sharma Notary Public as DW1, Uday Chand Kaushik, Advocate as DW2, Aji Ram as DW3, Parveen Kumar as DW4 and Tekchand Lambardar as DW5 and brought on record Ex.D1 to Ex.D3 and copies of sale deed and mutation as Mark A and Mark B.

Mr. Gaurav Singla, learned counsel appearing on behalf of the appellant-defendants submitted that agreement to sell dated 21.08.2006, Ex.D1 has been proved on record through the testimony of DW1-Rohtash Sharma, Notary Public but the Courts below have erroneously discarded the aforementioned evidence. Even in the absence of the expert, once the agreement to sell in favour of defendant no.2, has been proved, sale deed was genuine as defendant no.2 was a bonafide purchaser. Defendant no.1 had never intended to sell the land to the plaintiffs as sum of Rs.50,000/- was received as loan transaction. Non-examination of the stamp vendor of the agreement to sell dated 21.08.2006 was not significant.

I have heard the learned counsel for the appellant-defendants, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr.Singla, for, defendants failed to prove the execution of the agreement to sell dated 21.08.2006 by not examining the stamp vendor or its register which would have established whether it was ante dated or actually entered. On the other hand, plaintiffs proved the execution of the agreement to sell and payment of earnest money. It is a matter of record that defendant no.2 is none else but relative of Aji Ram.

The appeal is also accompanied by two applications seeking condonation of delay of 75 days in re-filing as well as 595 days in filing the appeal on the ground that appellants were not well but no record has been placed on record.

The appeal is dismissed on merits as well as on limitation.

(AMIT RAWAL)
JUDGE

January 17, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No