

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

RSA No.5993 of 2015 (O&M)

Date of decision:13.05.2019

Kultar Singh

... Appellant

Vs.

Sulinder Kumar @ Surinder Kumar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.P.S.Ahluwalia, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff has not been successful before the trial Court in seeking mandatory injunction against the respondent-defendants by invoking the provisions of Section 77 of Indian Registration Act, 1908 (hereinafter referred to "1908 Act").

The suit aforementioned was based on the premise that defendants had entered into an agreement to sell-cum receipt dated 30.04.2002 in respect of 14 kanals 0 marla at the rate of Rs.2,12,000/- per acre and received a sum of Rs.2,20,000/- as earnest money. The remaining amount was agreed to be paid before the Sub-Registrar on 30.03.2003. The possession was delivered. The plaintiff had been ready and willing to execute the sale deed as on 03.03.2003 he purchased the stamp papers of Rs.50,315/- with the consent of the defendants. The defendants reached Kaithal on 24.3.2003 and got the sale deed executed but left the seat of

scribe and thereafter, did not turn up. The plaintiff presented the application dated 21.05.2003 under the provisions of Section 36 of 1908 Act. The sub-registrar issued the notice to the defendants. The Sub-Registrar after recording the evidence rejected the claim vide order dated 24.03.2006 and the appeal was filed which was also dismissed and therefore, sought the indulgence of the Court.

The defendants opposed the suit by raising the numerous preliminary objections and alleged that defendants used to borrow the money from Ram Kumar who used to obtain their signatures on the blank papers as security. By using the same had converted into a forged and fabricated agreement to sell in question. In fact, the plaintiff had approached the defendants to take the suit land on lease. In such circumstances, the defendants had reached Kaithal for execution of the same but converted the same into agreement to sell. On receipt of the notice of Sub-Registrar, appeared and denied to have entered into agreement to sell.

The plaintiff in support of the aforementioned pleadings examined seven witnesses including the handwriting expert and brought on record Ex.P1 to Ex.P18, Ex.PW7/X and Ex.PW7/B, reports of handwriting and finger experts. On the other hand, defendants examined seven witnesses and brought on record Ex.D1, Ex.D2, Ex.DH, Ex.DF, Ex.DG, Ex.DB/1, Ex.DB/2, Ex.DE, Ex.DD, Ex.DB, Ex.DC, Ex.DW2/A, Ex.DW2/B, Ex.DW2/C, Ex.DW2/D, Ex.DW3/A, Ex.DW4/A, Ex.DW4/B, Ex.DW/C, Ex.D9, Ex.D10, Mark A to Mark G, and Ex.D11.

Mr. R.P.S.Ahluwalia, learned counsel appearing on behalf of the appellant-plaintiff submitted that agreement to sell-cum-receipt had been proved on record through the testimony scribe-Mahi Pal, who scribed the same and PW3-Vikramjeet, Lambardar who categorically stated that the same was typed in his presence and after considering the same to be correct signed it. PW3 proved the documents, Ex.P3, Ex.P4 and Ex.P5 statements recorded under Section 36 of 1908 Act. Even the standard signatures on the agreement to sell with specimen signatures were also tallied. PW-1, Suresh Sharma, scribe also acknowledged the intention of the party. The suit in such circumstances was maintainable in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy 1999 (3) RCR(Civil) 607**. The defendants have admitted the execution of the agreement to sell and the signatures, in such circumstances, the Courts below ought to have decreed the suit.

I am afraid the aforementioned arguments are not sustainable, for, the defendants never admitted the execution of the agreement to sell, rather from the pleadings, it revealed that they alleged had signed the blank papers for the purpose of lease deed registered before the Sub Registrar and the same was converted and when demanded the papers, were refused.

It is a matter of record that plaintiff filed the suit only in 2006. Mr. RPS Ahluwalia, Advocate submitted that cause of action accrued only when the Sub Registrar dismissed the application under Section 36 of 1908

Act.

No doubt, the remedy under Section 77 of 1908 Act, is available but it cannot be isolated from the statutory provisions of the Specific Relief Act, 1963 as the evidence and the categoric stand in the written statement do not reveal the intention of the defendants to part with the land or sale by way of agreement to sell, in such circumstances, was required to claim specific performance.

It appears that plaintiff wanted to circumvent the affixing of court fee, thus, readiness and willingness cannot be said to be perpetual. There is no dispute to the ratio decidendi culled out in the aforementioned case (supra) where the Court after noticing the facts of the case found the intention of the parties by granting the relief under Section 77 of 1908 Act. It was also observed that relief under Specific Relief Act was also of wider amplitude.

The regular second appeal is dismissed. Consequently, the application seeking condonation of delay of 138 days in re-filing the appeal is also dismissed.

May 13, 2019

savita

(AMIT RAWAL)
JUDGE

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