

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

RSA No.1570 of 2018(O&M)
Date of decision: 27.09.2019

Bhajan Singh

... Appellant

Versus

Piara Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Amandeep Singh Manaise, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 18.11.2016. As even the appeal preferred against the said decree failed and was dismissed on 22.11.2017, the appellant-defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of specific performance of the agreement to sell dated 20.02.2014 and in the alternative suit for recovery of Rs.1,95,000/-. In brief, his case has been that defendant Bhajan Singh happened to be the owner in possession of the land measuring 2 kanals 2 marlas i.e. $\frac{1}{2}$ share out of the total land measuring 4 kanals 4 marlas. Vide agreement dated 20.02.2014 entered into between the parties, the suit property was agreed to be sold for a sale consideration of Rs.3,00,000/-. A sum of Rs.1,95,000/- were paid as earnest money at the time of execution of the agreement. The balance amount was to be paid at

the time of execution and registration of the sale deed on 20.08.2014. The plaintiff went to the office of Sub Registrar, Gurdaspur on the appointed day along with the balance consideration and necessary expenses, but the defendant failed to present himself and perform his part of the contract. Thereafter, he was even served with a notice to execute the sale deed, but to no avail. Thus, the suit.

In defence, the defendant pleaded, *inter alia*, that though he was the owner of the suit land measuring 2 kanals 2 marlas, situated at Village Gunopur, but no such agreement dated 20.02.2014 was executed between the parties. Likewise, even the receipt of sum of Rs.1,95,000/- as earnest money from the plaintiff was also controverted and denied.

Upon a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that plaintiff (PW1) appeared in support of his claim and tendered his duly sworn affidavit as PW1/A. Mohan Singh (PW2), one of the attesting witnesses, testified in his deposition the execution of the agreement on 20.02.2014. Likewise, Narinder Singh (PW3), the Deed Writer, identified the signatures of the parties on the agreement Ex.P1. Both the witnesses deposed that post execution of the agreement, the contents thereof were read over and explained to the parties by the scribe. Whereupon, the parties as also the witnesses signed the agreement. Mohan Singh (PW2) proved in his testimony that a sum of Rs.1,95,000/- were received by the defendant as earnest money on 20.02.2014 itself. The Deed Writer Narinder Singh also deposed on the same lines. To prove that plaintiff has always been ready and willing to perform his part of the contract, he proved the affidavit Ex.P3, which was duly attested by the Executive Magistrate, Gurdaspur, showing

that he was present at the office of Sub Registrar on 20.08.2014. Therefore, the plaintiff discharged the initial onus as regards the execution of the agreement.

The argument advanced by learned counsel for the defendant that in fact the alleged agreement (Ex.P1) was signed by the defendant under a belief that it was being executed only for the purpose of securing a loan obtained by him from the plaintiff, was contradictory to the stand set out in the written statement and was beyond pleadings. On the contrary, the plaintiff had brought on record sufficient evidence, i.e. bank statement Ex.P5 which showed withdrawal of an amount of Rs.1,00,000/- from the bank account of the plaintiff on 20.02.2014, the day the agreement was executed. That being so, the only and the inevitable conclusion the Courts below could reach was: for the plaintiff duly substantiated his claim, he was entitled to the decree prayed for.

On being pointedly asked, learned counsel for the appellant failed to refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Court.

The appeal being devoid of merit is, accordingly, dismissed.

27.09.2019
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO