

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

**CHANDIGARH**

**RSA-2268-2018**

**Date of Decision: November 18, 2019**

**Kura Ram**

**...Appellant**

**Versus**

**Gurmail Ram and another**

**...Respondents**

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

Present: Mr. Naveen Swaich, Advocate,  
for Mr. Kulwant Singh Dhanora, Advocate,  
for the appellant.

**ARUN PALLI, J. (ORAL)**

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 03.12.2016, and as even the appeal preferred against the said decree failed, and was dismissed on 21.07.2017, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

Plaintiff prayed for specific performance of the agreement to sell, dated 16.07.2008, executed by the defendants qua the suit property, measuring 2 Marlas, marked with letters 'ABCD' and shown in Red Colour in the site plan appended with the plaint, and in the alternative for recovery of Rs.1,60,000/-.

In brief, the case set out by the plaintiff was that parties had entered into an agreement to sell, dated 16.07.2008, for a sale consideration of Rs.1,10,000/-. Rs. 80,000/- were paid in cash as earnest money and the remaining sale consideration, i.e. Rs.30,000/- were to be paid at the time of execution and registration of the sale deed on 15.11.2009. Further, at the time of execution of the agreement itself, the defendants put the plaintiff in possession of the house in question. For, plaintiff was always ready and willing to perform his part of the contract, he remained present in the office of the Sub-Registrar, Phillaur, on 16.11.2009, and was fully equipped with the balance sale consideration. However, as 15.11.2009, was a holiday and on 16.11.2009 and 17.11.2009, the then Sub-Registrar, Phillaur, was not present, plaintiff appeared in the office of the Sub-Registrar on 18.11.2009, but the defendants failed to turn up to execute the sale deed. Thus, the suit.

In the written statement filed by defendant No. 1, execution of the agreement in question was denied and the same was alleged to be a forged and fabricated document. Neither did the defendant ever agree to sell his house nor was in need of money that would require him to alienate the suit property. Thus, the suit was liable to be dismissed.

In a separate written statement filed by defendant No. 2, it was pleaded that she was blind since 8-9 years, and she never thumb-marked the agreement in question or agreed to sell the suit property to the plaintiff.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that to succeed plaintiff was required to prove execution of the agreement, however he failed to examine

any of the attesting witnesses to the agreement. The plaintiff examined Rajinder Kumar (PW-3), the Deed Writer/Typist, but his testimony could not be considered and read as statement of the attesting witness to the document, unless he personally knew the parties and had personal knowledge as regards contents of the document. Undoubtedly, during his cross-examination he deposed that he knew Sammo (defendant No. 2) personally, but failed to disclose her family background and his relations with Sammo. He also did not know if Sammo (defendant No. 2) was blind or not since last 10-12 years. He did not even know that if there was any relationship between the parties to the *lis*. Likewise, even the statement of Hardev Guru (PW-2) was inconsequential to prove execution of the agreement, for, he was examined to show that stamp papers were purchased from him. Thus, in the absence of any cogent evidence, plaintiff failed to prove if any such contract was indeed entered into between the parties. Further, the alleged agreement was executed on 16.07.2008 and the date fixed for execution and registration of the sale deed was 15.11.2009. However, plaintiff filed the present suit on 17.11.2012, and, thus, the same was time barred. The plea set out by plaintiff that he appeared before the Sub-Registrar for execution of the sale deed on 15.11.2009, but 15.11.2009 being Sunday, the office of the Sub-Registrar was closed, and on the successive two days, i.e. 16.11.2009 and 17.11.2009, the Sub-Registrar, Goraya, was not present. However, nothing was brought on record to show that on 16.11.2009 and 17.11.2009, Sub-Registrar, Goraya, was not present and did not discharge his duties or his office was closed. Not just that,

plaintiff moved an application under Section 5 of the Limitation Act, seeking condonation of delay in filing the present suit, even though the said provision would not apply or had any bearing as regards the limitation prescribed to institute the suit. Even otherwise, once the date fixed for execution and registration of the sale deed was fixed as 15.11.2009, suit filed by plaintiff on 17.11.2012 was barred by limitation.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

**(ARUN PALLI)**  
**JUDGE**

**November 18, 2019**

P Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO