

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

**RSA No.5927 of 2017 (O&M)
Date of Decision.25.01.2019**

Abdul Hamid (since deceased) through LRs ...Appellant

Vs

Mohd. Yamin and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate
for the appellant.

Mr. Roopak Bansal, Advocate
for the caveators-respondents.

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AMIT RAWAL J. (ORAL)

C.M. No.15556-C of 2017

The application for impleading the legal representative of deceased-appellant Abdul Hamid is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

RSA No.5927 of 2017

The appellant-plaintiff has not been successful in defending the appeal preferred by the defendants against the judgment and decree of the trial Court, which decreed the suit for specific performance of agreement to sell dated 13.11.1998 and confined it to alternative relief of recovery of earnest money along with interest @6% per annum.

The plaintiff asserted that Mohd. Yamin and Mohd. Ilias had entered into agreement to sell in favour of the plaintiff in respect of land measuring 7 kanals 2 marlas for a total sale consideration of

₹18,000/- and was put into possession. Mohd. Ilias died on 15.10.2006 and left behind defendants No.2 to 7 as the legal heirs. The plaintiff had constructed a tubewell kotha and installed submersible pump to which the defendants were fully aware.

The defendant opposed the suit by raising objection qua maintainability, locus standi and denied the agreement or receipt of ₹18,000/- and also set up a counter claim saying that both Mohd. Yamin and his brother Mohd. Ilias were joint owners. The plaintiff had an evil eye on the land and forged a receipt of ₹18,000/- alleged to have been executed and signed by defendant No.1 regarding the full and final sale price of the land i.e. 1/3 share. Though it had been alleged in the said receipt that possession had been given to the plaintiff but no suit was filed after demise of Mohd. Ilias by the plaintiff and therefore, readiness and willingness was wanting.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the defendants have entered into an agreement to sell of land mentioned in para No.1 of the plaint on 13.11.1998?OPP*
- 2. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 4. Whether the plaintiffs have concealed the material facts from the Court? OPD*
- 5. Relief.”*

The plaintiff in support of the pleadings examined six witnesses and brought on record documents Ex.P1 to Ex.PW6/A i.e. site plan, receipt, aksh sijra, Jamabandi and mutation etc. On the other hand, defendant examined four witnesses and brought on record photographs and certified death certificate of Hazi Sufedi.

Ms. Bhanvi Sood for Mr. Aditya Jain, learned counsel appearing on behalf of the appellant submitted that time was not the essence of the agreement and on breach cause of action arose to file the suit on 02.04.2008 and it was filed on 4.4.2008. The execution of the agreement to sell and payment of earnest money has been proved to the hilt. Defendants have not been able to belie signatures of both the co-owners as the experts examined by respective parties have given opinion in favour of their clients. Readiness and willingness cannot be said to be wanting as latter part of Article 54 of the Limitation Act gave cause of action on breach which was on 02.04.2008.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for, concededly defendants have been successful in proving the death of Mohd. Iliyas in the year 2006. No explanation has come forward in not approaching the legal heirs and so the property qua his share was mutated whereas the suit was filed in the year 2008. Readiness and willingness was, thus, wanting. The trial Court while granting discretionary relief remained oblivious of the aforementioned fact. The finding of fact and law arrived at by the lower Appellate Court confining the decree to the alternative relief is, in my view, cannot be

said to be illegal and perverse.

There is another aspect of the matter. Looking from the naked eyes, it appears that an attempt has been made to adjust distance of last few lines of the agreement to sell so that the same can be adjusted on blank thumb marked paper.

No substantial question of law arises for determination by this Court, much less, no ground for interference is made out.

Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 25, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No