

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

RSA No.6057 of 2017(O&M)

Decided on:14.10.2019

Rewati Lal (since deceased) through his LRs

.....Appellant

versus

Lachhi Ram

....Respondent

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

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

DR.RAVI RANJAN, J. (Oral Judgment)

CM-12573-C-2019

This application has been filed by the appellant for preponing the date of hearing of the main appeal.

A ground has been taken by learned counsel for the appellant that the execution is going on and the next date fixed in execution case is 29th October, 2019. It is contended that if the matter is not heard today and stay is not granted then the appellant would have to furnish the entire decretal amount alongwith interest.

Be that as it may, since learned counsel has made out a case for early hearing of this appeal, the hearing of this appeal is advanced from 14.02.2020 to today itself.

The application stands disposed of.

RSA No.6057 of 2017

This appeal is directed against the Judgment and decree passed by the Additional District Judge, Palwal in Civil Appeal No.99 of 2015, which was preferred by the present defendant/appellant assailing

the Judgment and Decree dated 16.09.2015 passed by the Civil Judge (Jr.Divn.), Palwal, whereby the suit of the plaintiff/respondent was decreed in part.

1. The plaintiff/respondent brought a civil suit for grant of decree of possession by way of specific performance of agreement to sell by directing the defendant to execute and get registered a sale deed of the suit land and deliver the actual physical possession thereof after payment of balance sale consideration and if he does not execute the sale deed then the same may be executed through the process of Court and possession be delivered to the plaintiff. An alternative relief has been sought for a decree for recovery of earnest money of Rs.6,25,000/- alongwith the interest at the rate of 18% per annum from the date of receipt of earnest money by the defendant alongwith the damages of Rs.5 Lakhs in case it would not be possible for the Court to pass a decree for specific performance.

2. The plaintiff came out with a case that the defendant executed agreement to sell of the suit property in his favour on 02.06.2009 after passing the part of sale consideration of Rs.6,25,000/- out of the total Rs.7 Lakhs as earnest money. The target date for execution and registration of sale deed was fixed as 01.06.2010, i.e. after one year for execution of sale deed on payment of the balance amount of sum of Rs.75,000/-. However, though the plaintiff was ready and willing to perform his part of contract, it was claimed that the defendant did not appear before the competent authority for execution and registration of sale deed despite having been approached by the plaintiff on 15.05.2010

and again on 01.06.2010. On both occasions, he tendered the amount to the defendant and requested him to execute and get the sale deed registered but the defendant turned dishonest and did not execute the sale deed and now he wants to alienate the suit property in favour of some other person but on the date fixed for the execution and registration, i.e., 01.06.2010, the plaintiff remained present in the office of Sub-Registrar, Palwal with the balance sale consideration and registration expenses and remained there throughout the day but the defendant did not turn up. The plaintiff moved an affidavit before the Sub-Registrar-cum-Executive Magistrate, Palwal, which was returned in original to him after attesting the same. When, inspite of several requests the defendant did not become ready to execute the sale deed after receiving the balance sale consideration, the civil suit was filed.

3. The trial Court has recorded a finding after consideration of materials on record including the evidence led by the parties, both oral and documentary, that it is proved that there was an agreement to sell but at the same time it also took a view that the plaintiff has not been able to prove his readiness and willingness. However, in the facts and circumstances of the case Rs.6,25,000/- was already received by the defendant, the alternative relief was allowed and the trial Court found the plaintiff entitled to receive back the earnest money in terms of the agreement to sell alongwith interest at the rate of 9% per annum to be calculated from the date of filing of the suit till its realisation. While recording such finding the trial Court has observed that the relief of specific performance is equitable relief and equity demands that no one

should be enriched at the cost of others.

4. The defendant/appellant preferred Civil Appeal No.99 of 2015 which was also dismissed by the Additional District Judge, Palwal vide the Judgement and Decree impugned affirming the findings recorded by the trial Court.

5. In the aforesaid background of the factual matrix, I have heard learned counsel for the appellant and have perused the records of this case.

Learned counsel for the appellant has vehemently argued that it would be apparent from the testimony of the defendant/appellant who has examined himself as DW1 that the money transaction took place with one Maan Singh but indeed the same was returned to him as no other case is pending save and except the case arising out of the agreement to sell, however, the First Appellate Court, while noticing this limb of argument raised before it by the appellant, has also noticed that at the same time DW1 has stated that he did not remember regarding the factum of the transaction with Maan Singh and according to him that was regarding 7 Kanals of land.

6. Both the Courts below have dealt with the issue and have observed that the defendant accepts his signature but the case of the defendant is that his signature was taken on the blank papers in the presence of Maan Singh, Netar Pal and Lachhi Ram in some hotel. He has stated that it was with connection to some loan from some financial institution but later on it was informed to him that the financial institution has not sanctioned the loan. However, at no place it has been stated by

the defendant/appellant either in his pleading or in his evidence that he had applied to which financial institution for loan and once he admits his signature upon the document and the signature having been put in the presence of Maan Singh, Nettar Pal and Lachhi Ram (the plaintiff), he has not been able to plead the manner in which the fraud has been played upon him and has not been able to prove it by leading any cogent evidence. The evidence led by the plaintiff, such as, by producing the attesting witnesses of the document, the agreement has been proved and the witnesses have also stated that money transaction took place in their presence which was a cash transaction in the form of Rs.500 notes. Thus, that having been established and fraud not having been established by the defendant, there was no occasion for the Courts below to take a different view in the matter which they have already taken. Though it has been stated by DW1 during his cross-examination that some transaction took place with Maan Singh but the money was returned to him but he failed to disclose the amount of such transaction and has also stated that it was for 7 Kanals of land but this part of evidence would not be of much significance because this is not a *lis* between Maan Singh and the defendant/appellant. It is a case between the plaintiff-Lachhi Ram and the defendant/appellant in which Maan Singh has stood as a witness who was also one of the attesting witnesses of the agreement to sell and also a witness to the transaction. That apart, no such plea has been taken by the defendant in his pleading also.

7. Having found as above, in my considered view, the defendant/appellant has not been able to make out any case by raising any

cogent ground or substantial question of law warranting interference in the impugned Judgement.

In the result this appeal, being devoid of any merit, is dismissed.

October 14, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable :	No