

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.766 of 2017 (O&M)

Date of Decision: February 06, 2019

Surmukh Singh

...Appellant

Versus

Joginder Singh alias Joginder Pal (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate,
for the appellant-plaintiff.

AMIT RAWAL, J. (Oral)

CM No.1661-C & 1663-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 128 days in re-filing and 13 days in filing the appeal is condoned.

Applications stand disposed of.

CM Nos.1662-C of 2017

Permission is granted to make up the deficiency in the court fee good.

CM stands disposed of.

CM No.1916-C of 2019

It is averred that the deficiency in the court fee has been made good but with some delay. Necessary court fees has been attached with the present application.

Allowed subject to all just exceptions. Applicant-appellant is

permitted to make the deficiency in the court fees good.

RSA No.766 of 2017

Appellant-plaintiff has not been successful in claiming specific performance of the agreement to sell dated 15.03.2002 in respect of land measuring 26 kanals 15 marlas.

It was alleged that Joginder Singh defendant was owner in possession of land measuring 91 kanals 8 marlas and vide sale deed dated 26.02.2002, sold 64 kanals 13 marlas and for remaining land measuring 26 kanals 15 marlas, had entered into another agreement to sell of even date. Since the previous sale deed was impounded, occasion arose to enter into agreement to sell, but the defendants did not come forward for execution and registration of the sale deed, therefore, suit was filed.

Defendant No.1 denied the execution of the agreement to sell dated 15.03.2002 but admitted agreement to sell dated 26.02.2002 and another reason given was that previous agreement to sell reflected rate of the land at ₹ 2,85,000/- per acre, but the present one showed @ ₹ 1,25,000/- per acre.

Defendant Nos.2 to 5 also filed their separate written statement. Subsequent vendees also claimed themselves to be bonafide purchasers.

Mr. Sanjiv Gupta, learned counsel for the appellant-plaintiff submitted that once defendant No.1 in the written statement admitted agreement to sell dated 26.02.2002, the other agreement to sell dated 15.03.2002 has been proved through the testimony of PW-1 and PW-2. The witnesses are always known and relatives of the parties. The extension has also been proved on record. There was no mens rea on the part of the plaintiff as the defendant had an intention to part with the land which is

reflected from the sale deed dated 26.02.2002 of land measuring 64 kanals 13 marlas. There was an apprehension in the mind of the vendor that the second sale deed may not also be impounded and in such circumstances, the land was agreed to be sold at a lesser rate.

I am afraid, the aforementioned argument is not sustainable as during the interregnum, third party rights had been created. The suit was filed on 26.05.2005, though the target date was 20.06.2002, which was extended upto 30.12.2002 (Ex.P5). No explanation has come forth from the plaintiff in filing the suit almost close to expiry of limitation. The readiness and willingness was also not proved on record. It is settled law that the person has to be ready from the date of execution of the agreement to sell, during its currency, till the filing of the suit and during the pendency of the suit. If at all the plaintiff was sure about the execution of the agreement to sell in question, assistance of the expert could have been taken. Plaintiff miserably failed to prove the intention of the defendants for the extension. In such circumstances, the Courts had no other occasion but to dismiss the suit.

For the reasons aforementioned, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 06, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No