

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

**RSA No.994 of 2018 (O&M)
Date of Decision.20.03.2019**

Singh Ram

...Appellant

Vs

Ram Asra Dhiman and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Garg, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.2462-C of 2018

For the reasons stated in the application, delay of 448
days in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.2463-C of 2018

For the reasons stated in the application, delay of 476
days in refilling of the appeal is condoned.

Application is allowed.

RSA No.994 of 2018

The present regular second appeal is directed against the
concurrent finding of fact whereby the suit of the respondent-plaintiff
for specific performance of the agreement to sell dated 22.02.2008 in
respect of land measuring 19 kanals 1 marla has been decreed and
defendant No.1 has been directed to execute the sale deed in favour of
the plaintiff after making the payment of mortgage amount to
defendant No.2 and with further direction that in case of non-
payment, plaintiff may make the payment to be recovered from

defendant No.1 with simple interest @6% from the date of redemption of mortgage till realization.

The respondent-plaintiff sought the aforementioned relief on the premise that defendant No.1 was owner in possession of the aforementioned suit land and had obtained a loan from defendant No.2 Bank by mortgaging the land in dispute with defendant No.2 and also land measuring 7 kanals 7 marlas with one Hari Singh. He was under debt and interested to sell the land measuring 26 kanals 8 marlas. The plaintiff agreed to purchase the same @₹13 lakhs per acre by entering into the agreement in question against the payment of earnest money of ₹23 lakhs by stipulating the date for execution and registration of sale deed as 01.12.2008. The terms and conditions of the agreement envisaged that in case defendant No.1 did not get the land redeemed before the last date for execution of the sale deed, there would be endorsement and entitled to execution of sale deed in respect of 19 kanals 1 marla @₹12 lakhs per acre. It was averred that defendant No.1 did not execute the sale deed on or before 01.12.2008, which was extended to 31.12.2008 by making endorsement of 01.12.2008. On 02.12.2008, plaintiff paid an amount of ₹50,000/- to defendant No.1 vide cheque and thus, total amount received was ₹23,50,000/-. On 24.12.2008, defendant No.1 was approached but by that time had not cleared the loan and sought another extension upto 31.01.2009. Since it was a holiday, was extended to 28.02.2009. Plaintiff was surprised when defendant No.1 with dishonest intention and ulterior motive served legal notice dated 10.02.2009 alleging that defendant No.1 had returned the earnest

money of ₹23 lakhs on the basis of some writing dated 5.2.2009. The aforementioned notice was duly replied. 28.02.2009 being Saturday, office of Registrar was closed. Plaintiff along with the draft of ₹5,07,500/- being the balance sale consideration and necessary expenses approached the office of Sub Registrar on 2.3.2009 but the defendant No.1 did not appear, thus, alleged readiness and willingness. Even possession was also stated to have been delivered to the plaintiff.

Defendant No.1 opposed the suit and denied to have executed the agreement to sell and stated that the agreement was wrong and price of one acre was mentioned as ₹13 lakhs and not ₹12 lakhs. Plaintiff did not have any money to execute the sale deed @₹13 lakhs per acre and denied to have delivered possession.

Defendant No.2 resisted the suit by raising preliminary objections and stated that defendant No.1 had received two loans from the bank against his agricultural land but did not repay the amount of ₹1,44,691/- and ₹.1,32,485/- (as principal and interest upto 31.03.2009) and had superior right on the land.

Plaintiff in support of the evidence examined five witnesses and brought on record Ex.P1 to P13, copy of report of PW5 along with annexures as Ex.P14 to P44. Defendants examined Singh Ram as DW1, Sukhwinder Singh DW2 and tendered documents Ex.D1 to D4. In rebuttal, plaintiff appended copy of jamabandi Ex.P45.

Mr. Sunil Garg, learned counsel appearing on behalf of the appellant-defendant No.1 in support of memorandum of appeal

submitted that jurisdiction of the court to grant the decree or to consider various circumstances should be used carefully and should not be decreed at the drop of the hat. The respondent-plaintiff failed to prove the execution of the agreement to sell, much less, intention of the parties. It was an incomprehensible agreement. Repeated extensions revealed that plaintiff did not have sufficient balance to get the sale deed executed. The plaintiff sought declaratory relief that termination of agreement was bad. Agreement to sell was in respect of entire land measuring 26 kanals 8 marlas and not 19 kanals 1 marla. As regards the endorsement Ex.P2, there was no occasion to additional clause particularly when the original document was dated 22.02.2008 and there was gap of only 16 days by which the land was to be got redeemed. There was no impediment for the appellant to obtain redemption of land upto 30.11.2008. Vide notice, it was obligatory upon the plaintiff to challenge the same, therefore, in such circumstances suit was not maintainable.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Signatures on the agreement to sell and the endorsement have been proved through the testimony of expert. The writing Ex.D3 dated 05.02.2009 qua return of money and cancellation of agreement to sell did not appear on the back of the document Ex.P4. Devender Parshad PW5 stated that the person had written signatures Mark A1 to A11 but did not write disputed signatures with Mark Q1 and were forged, therefore, writing Ex.D3 bore forged signatures. In view of aforementioned evidence, the appellant-defendant could not take aid

of ratio decidendi culled out by Hon'ble Supreme Court in *I.S. Sikandar (D) by LRs Vs. A. Subramani and others 2014 (1) RCR (Civil) 236*, thus, argument of Mr. Garg is hereby repelled.

The document Ex.P5 revealed that Sub Registrar was requested to mark presence on 3.2.2009, defendant No.1 did not come forward and Ex.P8 dated 27.2.2009 and its endorsement Ex.P9 is also testimony of the readiness and willingness. PW1 Satish Kumar Arora proved two drafts dated 27.02.2009 were prepared by plaintiff for a sum of ₹05,07,500/- and ₹5,50,000/-, which shows continuous readiness and willingness. Non registration of agreement even if possession is proved is not mandatory requirement for claiming specific performance of agreement to sell.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No