

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

RSA No.3411 of 2018(O&M)
Date of decision: 15.11.2019

Gurpreet Kaur and another

... Appellants

Versus

Nirmal Singh and others

... Respondents

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

Present: Mr. Ranjit Sharma, Advocate, for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the appellants/plaintiffs was dismissed by the trial Court vide judgment and decree dated 16.03.2016, and as even the appeal preferred against the said decree failed and was dismissed on 19.05.2017, plaintiffs No.2 & 3 are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for possession by specific performance of the agreement to sell dated 29.08.1990 with regard to land measuring 10 kanals 13 marlas, comprised in specific khasra numbers, situated at village Dall, Tehsil Patti, District Tarn Taran, and in the alternative, for recovery of Rs.39,272/-.

In brief, the case set out by the plaintiffs was that they were permanent resident of village Bhikhiwind, and Nirmal Singh (defendant No.1) and Bhagwan Singh, predecessor-in-interest of defendants No.2 to 5,

were owners of the suit property i.e. a land measuring 10 kanals 13 marlas. Defendant-Nirmal Singh and Bhagwan Singh executed an agreement to sell dated 29.08.1990 qua the suit land in favour of the plaintiffs @ Rs.29,500/- per acre. Rs.5,000/- were paid as earnest money. The date fixed for execution of the sale deed in favour of Resham Singh, predecessor-in-interest of the plaintiffs, was on or before 18 Kattak. Subsequently, Resham Singh also paid a sum of Rs.24,500/- more to Bhagwan Singh. Accordingly, a *Yadashat* was recorded at the back page of the agreement. Plaintiffs have always been ready and willing to perform their part of the contract. Even, notice dated 06.02.2014 was served upon the defendants in this regard, and the plaintiffs remained present in the office of Sub Registrar, Bhikhiwind on 21.02.2014, but to no avail, thus, the suit.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that suit filed by the plaintiffs was time barred and the agreement to sell dated 29.08.1990 was a forged and fabricated document. Defendant-Nirmal Singh and Bhagwan Singh never executed any such agreement nor received any amount as earnest money. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that for plaintiffs to succeed, they were required to prove the execution of the agreement to sell dated 29.08.1990 by defendant No.1 and Bhagwan Singh. Further, during his life time Resham Singh, predecessor-in-interest of the plaintiffs, was always ready and willing to perform his part of the contract. In support of their claim, plaintiff No.2-Gurpreet Kaur appeared as her own witness, but conceded in her cross-examination that date fixed for execution of the sale

deed was 18 Kattak and they had gone to Tehsil office on 18 Kattak to execute the sale deed, but the time was extended. She further admitted that on 21 Kattak extension at the back of the agreement in question was recorded, but they did not serve any notice to defendants after 1990 to execute the sale deed in their favour. Likewise, Daljit Singh (PW2) proved extension (Ex.P2), however, his statement recorded in cross-examination suffered from crucial discrepancies as he deposed that the agreement in question was not executed in his presence and only the writing (Ex.P2) was recorded while he was present, but even the said writing did not bear his signatures or thumb impression. However, upon analysis of the agreement in question, it was observed that although the first page of the agreement bears thumb impression of Nirmal Singh, but it did not bear signatures or thumb impression of Bhagwan Singh. Likewise, even the Yadashat (Ex.P2) recorded at the backside of the agreement revealed that said extension was written on 21 Kattak and that too bears only the thumb impression of Nirmal Singh and the said writing is neither signed nor thumb marked by Bhagwan Singh, predecessor-in-interest of defendants No.2 to 5. So was the position as regards Ex.P3. Thus, the agreement Ex.P1 and receipts Ex.P2 & Ex.P3 were not binding upon Nirmal Singh and Bhagwan Singh. The date fixed for execution of the sale deed was 18 Kattak, but the plaintiffs failed to prove any document/ affidavit to show their presence on the said date in the office of Sub Registrar. Hence, they even failed to show that they were ready and willing to perform their part of the contract. As regards passing of earnest money and payment of remaining amount of Rs.24,500/- and Rs.5,700/-, the onus was upon the plaintiffs themselves, but again they failed to adduce any evidence to prove that any consideration/amount actually passed on to the

defendants pursuant to the agreement in question. On the contrary, Nirmal Singh (DW1) testified in his deposition that no such agreement was ever executed in favour of the plaintiffs and the alleged agreement was a fabricated document. Likewise, no earnest money was received from the plaintiffs as alleged. Significantly, the date stipulated for execution of the sale deed in the agreement in question was 18 Kattak only, the plaintiffs ought to have filed a suit within three years from 18 Kattak 1990, thus, the present suit filed on 19.03.2014 suffered from gross and inordinate delay and, hence, was barred by time.

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

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

15.11.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO