

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

RSA-2609-2016 (O&M)
Date of decision : 28.02.2020

Bhagat Ram (deceased) through his LRs

...Appellant(s)

Versus

Gian Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Kaushal, Advocate for the appellant(s).

Mr. Manish Kumar Singla, Advocate and
Ms. Shikha Singla, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant through his legal representatives have filed the present Regular Second Appeal against the judgment passed by the learned First Appellate Court, ordering refund of the earnest money alongwith interest at the rate of 6% per annum in place of decree for possession by way of specific performance of the agreement to sell.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 01.11.2001. The total sale consideration agreed to between the parties was ₹2,00,000/- out of which ₹1,60,000/- was paid as earnest money. As per the agreement, the parties had agreed to get the sale deed executed on 01.11.2002 which was later on extended to 01.11.2005.

The defendant contested the suit and pleaded that this is the

only dwelling house and the plaintiff being Police Constable who with undue influence got the agreement to sell executed.

Learned trial Court, on appreciation of evidence, dismissed the suit. However, learned First Appellate Court, as noticed above, ordered the refund of the earnest money.

Learned counsel for the appellant(s), has submitted that the endorsement dated 02.10.2002 has not been proved as it is attested by only one marginal witness but he did not appear for cross-examination and, therefore, his evidence cannot be considered. He further submitted that the suit filed by the plaintiff was barred by time.

This Court has considered the submissions. However, finds no substance therein.

The execution of the agreement to sell has been proved and there is concurrent findings arrived at by the Courts below. The endorsement is a part of the aforesaid agreement to sell. In fact, it is an endorsement written on the reverse side of the first leaf of the agreement to sell. It is duly signed by the defendant, who has since died.

There is finding of fact that the agreement to sell has been proved. Hence, merely because the marginal witness has not come forward to face cross-examination, would not be sufficient to ignore the endorsement, particularly when the endorsement has been proved by other evidence.

As regards argument of learned counsel for the appellant(s) with regard to the limitation, it may be noted that as per the endorsement, the date for execution and registration of the sale deed was extended to

01.11.2005 whereas the suit was filed on 22.05.2008. Hence, the suit was filed within the prescribed period of limitation. Article 54 of the Schedule attached to the Limitation Act, 1963, deals with two different eventualities. First part provides that limitation would began to run from the date agreed to between the parties for performance of the agreement to sell. In the present case, agreed date for performance of the agreement to sell was 01.11.2005, therefore, the suit filed is within the limitation.

In view thereof, there is no ground to interfere.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No