

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

ASHOK KUMAR
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RSA-476-2019 (O&M)

Date of decision: 02.11.2021

KURDA RAM (DECEASED) THROUGH HIS LEGAL HEIRS

..Appellants

Versus

MANOJ KUMAR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Jain, Advocate for the appellants.

ANIL KSHETARPAL, J (Oral)

The defendant in a suit for possession by way of specific performance of the agreement to sell assails the concurrent finding of fact arrived at by the Courts below.

The plaintiff (respondent) filed the suit on 06.02.2012 for grant of decree for possession by way of specific performance of the agreement to sell dated 23.06.2009. As per the agreement to sell, the predecessor of the appellants, on receipt of Rs.5 lakh, had agreed to sell the suit land measuring 16 kanal to the plaintiff. As per the written agreement to sell, the sale deed was to be executed on or before 28.09.2010. On the said date, there was a holiday and therefore, the plaintiff visited the office of the Sub Registrar on the next working day and got an affidavit attested to prove his presence. The plaintiff filed the suit on 06.02.2012.

The defendant contested the suit with the assertion that no agreement to sell was executed and in fact, he was made to sign the papers as documents of security for getting loan from the bank.

The plaintiff in order to prove the agreement to sell examined himself as PW1, Sant Lal (attesting witness) as PW2 and SK Verma (stamp vendor) as PW4.

On the other hand, the defendant examined himself as DW1 whereas Vikram was examined as DW2.

Both the Courts, on appreciation of evidence, found out that the execution of the agreement to sell stands proved. The plaintiff was always ready and willing to perform his part of the contract. Therefore, both the Courts granted the decree for possession by way of specific performance of the agreement to sell.

Heard learned counsel for the parties at length and with his able assistance, perused the paper book.

Learned counsel representing the appellant contends that the plaintiff did not examine the scribe of the agreement to sell. He further contends that the plaintiff has failed to prove his continued readiness and willingness for performing the said contract, as the suit in question was filed after a period of nearly 3 years.

The execution of the agreement to sell has been proved from the evidence of the plaintiff as well as by Sant Lal (attesting witness). It has been proved by SK Verma (stamp vendor) that the defendant purchased the stamp paper and signed in his note book. Sh. Sant Lal (attesting witness of the

agreement to sell) has proved the agreement to sell. The defendant failed to impeach credibility of the aforesaid witness in the cross examination. In such circumstances, non examination of the scribe cannot result in dismissal of the suit particularly when the plaintiff has already led sufficient evidence to prove the execution of the agreement to sell.

As regards to next argument, it may be noted that the plaintiff filed the suit after a period of 1 year and 5 months from the date fixed for registration of the sale deed as per the agreement to sell. The plaintiff has pleaded that he was always ready and willing. Learned counsel representing the defendant was given opportunity to cross examine the witness. However, learned counsel failed to impeach his credibility.

Both the Courts, on appreciation of evidence, have recorded a finding of the fact that the plaintiff is ready and willing to perform his part of the contract. Moreover, the argument of learned counsel that the suit was filed after a period of 3 years, is factually incorrect.

In view thereof, no ground to interfere in the impugned judgments is made out.

Dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

02.11.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE