

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1655-2017(O&M)

Date of decision:25.03.2021

Sukhwinder Kaur and others

.....Appellants

Versus

Avtar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Rakesh Sobti, Advocate for the appellants

Mr. Vivek Salathia, Advocate for the respondent

ANIL KSHETARPAL, J.(ORAL)

CM-3987-C-2017

Although, the delay in filing of the appeal is huge, however, in view of the no objection by the learned counsel for the respondent, delay of 120 days in filing the appeal is condoned.

Main case

The defendants-appellants are in Regular Second Appeal against the concurrent finding of fact arrived at by the courts below while decreeing the suit for possession by way of specific performance of the agreement to sell.

For the sake of convenience, the parties are referred by their status in the suit.

The plaintiff claims that the defendants entered into an agreement to sell on 10.11.2009 in his favour with respect to a large property against a sale consideration of Rs.20,00,000/-. As per the agreement to sell, the earnest money of Rs. 2,50,000/- was paid and the

agreement was signed by all the defendants. The sale deed was agreed to be executed on 09.11.2010. The plaintiff further claims that he had paid an amount of Rs. 1,00,000/- on 18.11.2009, Rs.50,000/- on 18.11.2009, Rs.1,50,000/- on 25.11.2009 and Rs.50,000/- on 01.01.2010. The target date for execution of the sale deed was extended till 29.05.2011 as per the writing dated 06.11.2010. Since 29.05.2011 was a holiday and therefore, the plaintiff attended the office of the Sub-Registrar on 30.05.2011 but defendants did not come forward to execute the sale deed. To create evidence of his attendance, the plaintiff got an affidavit attested from the Sub Registrar. Thereafter, he filed the suit on 08.09.2011 after serving a notice to the defendants on 14.06.2011. All the defendants filed a joint written statement taking a stand that there was no agreement to sell. It was pleaded that Gurinder Pal Singh-defendant no. 2 had taken a loan of Rs.2,50,000/- and their signatures were taken on the blank papers on deposit of an original sale deed of 100 square yard plots. Defendant no.1, 3 and 4 never extended the time for execution of the sale deed. There was an interpolation in the agreement to sell.

The plaintiff herself appears in evidence and also examined Niranjana Singh PW2. Learned trial court on appreciation of evidence found that all the defendants have signed on each and every page of the agreement to sell. They have also thumb marked all the four pages. It was further held that Gurinder Pal Singh-defendant no.2 and Sukhwinder Kaur-defendant no.1 had signed the correction entry. Thus, the trial court after recording finding that the plaintiff was always ready and

willing to perform his part of the contract, decreed the suit. Thereafter, the defendants filed the first appeal which has also been dismissed after re-appreciation of the evidence.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel representing the appellants submits that the agreement to sell was inadmissible in the evidence. He submits that in view of the amendment in Section 17 of the Registration Act, the agreement to sell is required to be registered before it can be considered in evidence. It is proved that the witness of the margin has subsequently signed the agreement to sell. Defendant no.2 Gurinder Pal Singh died during the pendency of the suit and no doubt, an application for bringing on record his legal representatives was allowed, however, the trial court did not amend the memo of parties.

Per contra, learned counsel for the respondent contends that the amendment in Section 17 of the Registration Act is applicable only if a person intends to protect his possession as provided under Section 53-A of the Transfer of Property Act, 1882. The language of Section 17(1-A) is clear and categoric. The agreement to sell is not required to be attested by two attesting witnesses. The defendants admit their signatures on the agreement to sell and therefore, the courts below have correctly decreed the suit.

At this stage, it will be appropriate to extract Section 17(1-A) of the Registration Act, 1908, inserted by amendment Act no.48 of 2001.

“Section 17(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.”

It is apparent that the amendment is only for the purpose of Section 53-A of the Transfer of Property Act, 1882. Still further, in the present case, there is no delivery of possession at the time of entering into agreement to sell. Hence, the agreement to sell was not required to be registered.

With respect to next argument of the learned counsel for the appellants, it may be noted that there is no requirement that the agreement to sell must be attested by two attesting witnesses. Even if the argument of the learned counsel representing the appellant is accepted, on its face value, still the validity of the agreement to sell in writing signed by all the appellants cannot be doubted, particularly, when the defendants admit their signatures/thumb impressions. The defendants have signed not only the agreement to sell but also the endorsements executed on various occasions in token of receipts of part payments. Still further, the defendants have taken a plea that their

signatures were obtained on blank papers, however, they failed to prove the same.

Next argument of the learned counsel representing the appellants is with respect to the fact that defendant no. 1, 3 and 4 did not sign the writing dated 06.11.2010 extending the date for execution of the sale deed. Even if the alleged extension of the date for execution of the sale deed is ignored, still the suit was filed well within time period. Still further, defendant no.2 has signed the writing dated 06.11.2010. All the defendants are members of one family. Hence, the signature of defendant no.2 is sufficient to extend the period for completion of the transaction.

Last argument of the learned counsel for the appellant is also required to be noted and rejected. Once the applications for bringing on record the legal representatives of Gurinder Pal Singh- defendant no.2 was filed and allowed, then the omission to correct the memo of parties can be rectified at any time. Learned counsel for the respondent has informed the Court that the aforesaid rectification has already been carried out under the orders of the Court. It has further been brought to the notice of the Court that the sale deed has already been executed pursuant to the agreement to sell in favour of the plaintiff.

Consequently, the Regular Second Appeal is dismissed.

25.03.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE