

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1789-2022 (O&M)

DATE OF DECISION: SEPTEMBER 13, 2022

YADVINDER SINGH

...APPELLANT

VERSUS

BAKSHISH SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. NAMIT KHURANA, ADVOCATE FOR THE APPELLANT.

MANOJ BAJAJ, J.(ORAL)

CM-6031-C-2022

This is an application under Section 5 of the Limitation Act for condonation of delay of 16 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay is condoned.

Main Case

The appellant-defendant is aggrieved against the judgement and decree dated 7.12.2021, passed by the first appellate Court in Civil Appeal No.10 of 2016, upholding the judgement and decree dated 7.12.2015, passed by the Civil Judge(Sr.Divn.), Yamuna Nagar at Jagadhari, whereby the suit for possession by way of specific performance filed by the respondent-plaintiff was decreed against the appellant-defendant.

Briefly, the facts of the case are that the defendant-appellant being owner in possession of the suit land measuring 16 kanal 1 marla comprised in khewat No.182 min., khatoni No.265 min., khasra No.32//14/2

(0-4), 16(8-0), 17/1(1-4), 25/2(6-13) situated at village Bapa, Hadbast

No.55, Sub Tehsil Radaur, Tehsil Jagadhari, District Yamuna Nagar, as per jamabandi for the year 2004-05 and mutation No.4499, entered into an agreement with the plaintiff-respondent for a sale consideration @ ₹11,00,000/- per acre, and executed agreement to sell dated 25.10.2010. The plaintiff paid the earnest money amounting to Rs.5,00,000/- to the defendant against a receipt, and 25.9.2011 was fixed as the target date for execution of sale deed. At the time of execution of the agreement, the suit land was mortgaged with the State Bank of India, Naharpur for an amount of Rs.4,00,000/- vide Rapat No.580 dated 3.4.2007, and it was undertaken by the defendant that before execution of the sale deed, he would get the suit land redeemed. On 25.9.2011, the sale deed could not be executed, being Sunday and on the next day, i.e. on 26.9.2011, the plaintiff visited the office of the Sub Registrar, Radaur, who was informed that the Tehsildar was not available, so the plaintiff was advised to come on the next day. The plaintiff went again on 27.9.2011, but the defendant did not turn up, however, the plaintiff got his presence marked by way of affidavit duly attested by a Notary. Thereafter, the plaintiff met the defendant on 28.9.2011 and requested him to get the sale deed executed, but the defendant never paid any heed to it. On this cause of action, the plaintiff filed suit for specific performance of contract dated 25.10.2010.

The defendant contested the suit by filing written statement and raised preliminary objections like *locus standi*, maintainability, estoppel, etc. and on merits pleaded that in October, 2010 the defendant intended to send his son abroad and needed money, and because the plaintiff used to lend money to the needy persons, the defendant contacted him and the

plaintiff agreed to lend him a sum of 2,50,000/- on interest @ 2½ % per month against furnishing of two blank signed stamp papers, four recent photographs and six blank signed white papers. On 15.9.2011, the defendant returned the loan amount alongwith interest, but the plaintiff refused to issue any receipt of the same, and misused the blank signed papers by forging the agreement to sell to cause wrongful loss to the defendant. Other averments in the plaint were also denied and in the end, it was prayed that the suit be dismissed.

After completion of pleadings of the parties, the trial Court in all, framed seven issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the trial Court decided all the issues in favour of the plaintiff and against the defendant.

Dissatisfied with the judgement and decree dated 7.12.2015, passed by the trial Court, the plaintiff preferred appeal bearing No.10 of 2016, and the same was also dismissed through the impugned judgement and decree dated 7.12.2021. Hence this second appeal.

Learned counsel for the appellant-defendant has argued that as per the agreement to sell dated 25.10.2010, the sale deed was to be executed on 25.9.2011, and as per the plaintiff himself the said date fell on Sunday, therefore, instead of visiting the office of the Sub Registrar on 26.9.2011, he went for registration of sale deed on 27.9.2011. He has further argued that though the Notary who attested the affidavit of plaintiff on 27.9.2011 was examined as a witness (PW-2), but he has not deposed that the plaintiff was having the requisite funds on the said date towards balance sale

consideration, for execution of the sale deed. According to Mr.Khurana, learned counsel for the appellant, the agreement to sell also does not contain the exact sale consideration, therefore, the trial Court as well as the appellate Court have erroneously decreed the suit of the plaintiff by even ignoring the discrepancy in the payment of earnest money. He submits that though as per the plaintiff, a sum of Rs.5 lakhs was paid as earnest money, but the receipt Ex.P2 is for a sum of Rs.2.50 lakhs. He prays that the impugned judgement and decree deserve to be set aside.

After hearing learned counsel for the appellant and considering the evidence on record, it is clear that the agreement to sell dated 25.10.2010 (Ex.P1) was proved by the plaintiff by examining the attesting witness as well as the scribe and it contains the sale consideration as well, i.e. @ Rs.11 lakhs per acre. Thus, the argument that the agreement to sell does not contain the amount of sale consideration is without any merit as the total sale consideration is easily calculable. During the course of hearing, learned counsel for the petitioner has produced the deposition of defendant-Yadvinder Singh, who admitted the signatures on the agreement to sell, as well as the receipt indicating payment of Rs.5 lakhs to him. The material evidence brought by the plaintiff has not been rebutted, therefore, the conclusion drawn by the trial Court and upheld by the appellate Court on the material issues is based upon proper appreciation of evidence.

At this stage, Mr. Khurana, learned counsel for the petitioner has argued that in fact a sum of ₹2.50 lakhs was received by the defendant as a loan to send his son abroad, but the said amount stood returned to plaintiff, and it was during the documentation of loan, certain signatures of

the defendant were obtained by the plaintiff whereupon this forged and fabricated agreement to sell has been executed.

This argument of learned counsel runs contrary to his earlier submissions noticed above, wherein he pointed out defect in the agreement to sell and discrepancy in the payment of earnest money. Admittedly, no evidence was adduced by the defendant to prove the instrument as forged or fabricated.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, no ground is made out for interference by this Court.

Dismissed.

September 13, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No