

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2673 of 1989 (O&M)
Date of decision:31.08.2022

Harphool

..Appellant

Versus

Hari Singh (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Kapoor, Advocate
for the appellant.

Mr. Hemant Bassi, Advocate and
Ms. Aashima Narula, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of fact arrived at by the courts below, the defendant has filed the present appeal.

The plaintiff's suit for the specific performance of the agreement to sell was decreed by the trial court as well as by the Appellate Court. As per the plaintiff, the defendant entered into an agreement to sell with respect to the land measuring 20 kanals and 2 marlas on receipt of Rs.13,500/- out of the total sale consideration of Rs.20,000/- on 26.12.1981. The parties had agreed to execute the sale deed on 15.06.1982. The suit was filed on 16.08.1982.

The defendant while contesting the suit claimed that the agreement to sell is a fictitious document and no amount was received by him. The defendant has claimed that he required some money urgently and for that purpose, he mortgaged the land against the loan of Rs.8,000/- while visiting to the office of Tehsildar with the plaintiff, on 20.12.1981.

Subsequently, he came to know that the agreement to sell had been executed but no amount of the sale consideration was paid to him.

In order to prove his case, the plaintiff examined Sh. Virender Kumar Sharma, Scribe as PW1. He proved entry No.573 dated 26.12.1981, in his regularly maintained register. Both the marginal witnesses, namely, Sh. Jug Lal and Daulat Ram were also examined.

The defendant while leading evidence, produced certain sale deeds in order to prove that the market value of the land was more than the amount reflected in the said agreement to sell.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book as well as the record which was requisitioned.

The learned counsel representing the appellant contends that the agreement to sell is fabricated on pre thumb marked papers. He further submits that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract as he has failed to prove Mark 'A', the affidavit sworn in by the plaintiff while appearing before the Sub-Registrar, on 15.06.1982. In the alternative, he submits that the decree for specific performance should not be granted after a long period of 40 years.

This court has considered the submission made by the learned counsel representing the appellant, however, finds no merit therein.

The agreement to sell is Ex.PW1/1, in the record file of the trial court which was requisitioned. The agreement to sell has been scribed on two non judicial stamp papers. On the first page, the appellant has not only signed the agreement to sell but has also thumb marked it. Even on the second page, the defendant has signed as well as thumb marked the said

agreement. On the last page, again, the appellant has thumb marked the document and has acknowledged the receipt of Rs.13,500/-. The agreement to sell is witnessed by two witnesses, namely, Sh. Jug Lal and Sh. Daulat Ram. The non judicial stamp papers were purchased on 26.12.1981 by Sh. Harphool (the appellant) for entering the agreement to sell in favour of Sh. Hari Singh. Thus, it is proved that the stamp papers were purchased on 26.12.1981, the date on which the agreement to sell was executed. Hence, there is no evidence that it was executed on pre thumb marked papers.

As regards the argument of the learned counsel representing the appellant that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract, it may be noted that though technically the plaintiff has failed to prove Mark-'A', i.e. his affidavit, however, in his deposition, he has stated that he visited the office of Registrar on 15.06.1982. It is not the case of the defendant that he was prepared to execute the sale deed. The suit was filed just after a period of two months from the date agreed to for performance of the agreement to sell between the parties.

Hence, there is no substance even in the second argument of the learned counsel.

The last argument of the learned counsel representing the appellant, though, seems to be firm and substantive in the first blush, however, the Court found it to be without any substance on a deeper scrutiny. The suit was filed by the plaintiff within a period of two months from the agreed date was decreed by the trial court on 15.06.1982. The defendant has kept the proceedings alive by filing the first appeal as well as the second appeal. In such circumstances, it will not be appropriate to deny the relief to the plaintiff which he deserves only on account of delay,

particularly when he has already paid more than 60% of the sale consideration. However, the Court is required to stay conscious of the fact that the remaining amount has remained with the plaintiff.

Keeping in view the aforesaid facts, the decree passed by the courts below is modified while directing the plaintiff to pay the balance sale consideration to the defendant (appellant), if not already deposited, with interest @ 15% per annum within a period of two months, from today, positively.

With the aforesaid modification, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

August 31, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No