

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1768 of 1999 (O&M)
Date of Order: 24.05.2022

Hari Dass (since deceased) through LRs

..Appellant

Versus

Jangir Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hemraj Bhardwaj, Advocate,
for the appellant

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 while filing the suit for possession by way of specific performance of the agreement to sell claims that the defendant has failed to honour the agreement. It is claimed that the defendant agreed to sell the land measuring 24 kanals for a total sale consideration of Rs.1,20,000/- which was paid in entirety by the plaintiff. As per the agreement to sell dated 04.01.1983, the sale deed was to be executed on or before 03.01.1993. The parties to the suit are related to each other.

The defendant contested the suit while asserting that the agreement to sell is forged and there is a litigation pending between the plaintiff's husband and his brother. The agreement to sell was proved by examining both the margin witnesses as well as the plaintiff apart from the Handwriting and Fingerprint Expert. The defendant himself appeared in evidence apart from examining Sh. Sukdev Dass and Sh. Mohinder Dass.

Both the courts on appreciation of evidence have found that the execution of the agreement to sell is proved and the plaintiff was always ready and willing to perform her part of the contract.

The learned counsel representing the appellant contends that there are certain recitals in the agreement to sell which are irrelevant. He further submits that it is highly improbable that the period for the execution of the sale deed was fixed after a period of 10 years without taking possession, particularly when the entire sale consideration has been paid by the plaintiff.

This court has considered the submissions and carefully examined the alleged agreement to sell Ex.P4. The agreement is contained in two pages. It is scribed on a stamp paper of Rs.2.25/-. The stamp paper was purchased for execution of the agreement to sell. Both the papers have been thumb marked by the defendant. In fact, on the second page, he has thumb marked twice over. There is no overwriting or fabrication in the agreement to sell. In these circumstances, the recital with regard to the reasons for agreeing to sell the property after a long period of 10 years, wholly depends upon the contract made between the parties. As regards the unnecessary recital in the contract, it may be noted here that `the specific performance of the contract cannot be declined only on this ground.

The next argument of the learned counsel representing the appellant, though appears convincing at the first instance, however, has no substance, on deeper scrutiny made by the Court. It is evident that the parties are *inter-se* related. The plaintiff has paid the entire sale consideration in order to help the defendant in the adverse circumstances. In this situation, the period for execution of the sale deed, particularly when the

entire sale consideration has been paid, cannot be said to be unreasonable. The defendant has not suffered any loss because of the gap of 10 years from the date of agreement to sell and from the date of registration of the said agreement.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

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

May 24, 2022
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(ANIL KSHETARPAL)
JUDGE

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