

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4481 of 2019(O&M)
Date of decision:28.03.2022

Harjinder Singh

...Appellant

Versus

Prem Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lakhwinder Singh Sidhu, Advocate
for the appellant.

Mr. Arihant Jain, Advocate, and
Mr. Rishav Jain, Advocate
for the respondents/caveators

ANIL KSHETARPAL, J (Oral)

The learned counsel representing the parties are ad-idem that on 16.01.2020, after hearing the arguments at length, a Coordinate Bench passed the following order:-

“Even though this Court is not inclined to interfere with the concurrent findings of the Courts below but only for the limited purpose of exploring the possibility of settlement with the Bank, matter is being kept pending. Appellant is at liberty to approach respondent no.2-Bank to explore the possibility of settlement.

Adjourned to 12.02.2020 to await the outcome thereof.”

The learned counsel representing the appellant admits that there is no settlement between the parties. This Bench has, once again, permitted the appellant to address the Court on the merits of the case.

Some facts are required to be noticed.

The plaintiffs filed a suit for grant of a decree of specific performance of the agreement to sell dated 27.03.2008, along with the relief

of possession, declaration and permanent injunction.

It is the case of the plaintiffs that defendant no.1 entered into an agreement to sell on 27.03.2008 with respect to a house constructed on a plot measuring 2 kanals and 12½ marlas (1570 sq. yards) @ Rs.5500/- per sq. yards. At that time, defendant no.1 received a sum of Rs.23,00,000/- as earnest money and the possession was delivered. The sale deed was to be registered on or before 31.08.2008. On 27.05.2008, another amount of Rs.5,00,000/- was paid. The period for performance of the contract was extended upto 31.12.2008. Subsequently, by another extension, the sale deed was agreed to be executed and registered on 31.03.2009. The plaintiff visited the office of Sub-Registrar but defendant no.1 did not come forward to perform his part of the contract which forced the plaintiffs to get their affidavit attested from the Sub-Registrar. It was asserted that defendant no.1, in the meantime, borrowed a loan by creating a charge on the property. The plaintiffs, after serving various notices dated 02.04.2009, 09.04.2009, 11.05.2009 and 21.07.2009, filed the suit on 8.01.2010.

Defendant no.1 contested the suit while asserting that his signatures have been taken on blank papers and he has been paid a sum of Rs.14.5 lacs whereas a sum of Rs.5,00,000/- was deposited in the loan account on 28.03.2008. Defendant no.1 further submitted that there is cutting and interpolation in the agreement to sell. In the alternative, defendant no.1 asserted that the plaintiffs did not have ready money, although, he called upon the plaintiffs to execute the sale deed on 31.03.2009.

In order to prove the execution of the agreement to sell, sh.

Bhushan Kumar-plaintiff no.2 appeared as PW1. Sh. Jawahar Lal Verma,

the witness to the agreement to sell also supported the case of the plaintiffs.

Both the courts on appreciation of evidence, have found that the plaintiffs were always ready and willing to perform their part of the contract and it was the defendant no.1 who failed to perform his part of the contract.

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

The learned counsel representing the appellant contends that since the possession of the property agreed to be sold was delivered to the plaintiff, therefore, the agreement to sell was scribed on the stamp papers required as per law. It is not in dispute that the agreement to sell was permitted to be produced on record and exhibited without any objection from the learned counsel representing the defendant. Moreover, the deficiency in stamp duty, if any, does not vitiate the contract between the parties.

In view thereof, no ground to interfere, with the concurrent findings of fact, is made out.

Dismissed.

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

March 28, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No