

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-176-2022 (O&M)

Date of Decision: 18.02.2022

Kuldeep Kumar Sharma

....Appellant

VS

Randeep Rana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. B.S. Bedi, Advocate
for the appellant

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate
for the respondents

SUDHIR MITTAL, J.

This regular second appeal has been preferred by the defendant against the judgments of the Courts below. The plaintiffs-respondents filed a suit for specific performance of agreement to sell dated 28.02.2011 and for grant of possession. The defendant was owner of a constructed showroom and he agreed to sell the same to the plaintiff at the rate of Rs. 46,500/- per sq. yards. The agreement was executed in presence of witnesses and was in favour of plaintiff No. 1 alone with a stipulation that plaintiff No. 1 may get the sale deed executed in favour of any person of his choice. Earnest money amounting to Rs. 50 lacs was paid. The final sale consideration was to be worked out after actual measurement of the plot upon which the showroom had been constructed and the balance was payable on 30.07.2011. The suit has been decreed and first appeal has been dismissed.

2. Learned counsel for the appellant has raised two arguments. The first

is that the agreement dated 28.02.2011 was no agreement in the eyes of law as it

was signed by the defendant alone. It did not bear the signature of the vendee and the witnesses and, thus, no reliance can be placed upon it. The second argument is that payment of earnest money has not been proved and, thus, the agreement being without any consideration, was no agreement in the eyes of law.

3. Execution of the agreement dated 28.02.2011 has been admitted by the defendant in his written statement. One of the attesting witnesses PW-18 has also been produced to prove the execution of the same. The trial Court held that execution of the agreement was admitted by the defendant also while appearing as his own witness. Based on the evidence on record, it has also been found that earnest money of Rs. 50 lacs has been paid. Accordingly, it has been held that the agreement to sell dated 28.02.2011 stood proved even though the copy produced on record was signed only by the defendant because no sane person would have handed over a copy signed by him to the other side without receipt of money. It is likely that while producing a photocopy on record, the signatures of plaintiff No. 1 and the attesting witnesses had been covered by a blank paper. This finding has been upheld by the learned first appellate Court by holding that according to the case set up by the defendant, he had himself got the agreement prepared and that being so he had to explain the circumstances under which a copy thereof came in possession of plaintiff No. 1 which contained only the signature of the defendant. Having failed to explain the same, a valid presumption could be drawn that it was handed over by the defendant himself after due execution and receipt of earnest money. The copy produced on record (Ex. DW-1/B) could have been an unsigned copy on which only the defendant affixed his signature. The same would not prove that Ex. PW-18/B produced by the plaintiff was a document on which signatures were appended by the witnesses and plaintiff No. 1 at a later stage.

4. The findings aforementioned are reasonable and are based on the evidence on record. Learned counsel for the appellant has not been able to point

out any perversity in the same and, thus, the argument that agreement dated 28.02.2011 was not a valid agreement has to be rejected.

5. A related argument raised is that PW-8 (attesting witness) could not have been relied upon as he was a chance witness. According to the plaintiff he had come to the Sub Registrar's office for renewal of his arms licence which already stood renewed upto 11.11.2011. The reason for his presence in the office of Sub Registrar having been proved to be illogical, his testimony was unreliable.

6. This argument has been rejected by the Courts below by holding a finding that it is possible for a person whose Arms Licence is yet to expire to go to the Sub Registrar's office for its renewal before hand. The conduct could not be stated to be such as was not possible of a reasonable man. This finding is also reasonable and plausible and I do not find any perversity therein. Apart from this reason, it deserves to be reiterated that the defendant has himself admitted the execution of the agreement both in his written statement as well as in the witness box and, thus, the argument of PW-18 being an unreliable witness pale into insignificance.

7. This brings me to the second argument that payment of earnest money was not proved by evidence and the agreement being without any consideration was no agreement in the eyes of law. The argument has been rejected by both the Courts below. Concurrent findings have been returned that there is evidence on record establishing availability of sum of Rs. 50 lacs with plaintiff No. 1 on the date of execution of the agreement. Proof of payment of the same is in the statement of PW-18 as well as the signature of the defendant appended under the receipt. It is, thus, not possible to hold that the earnest money was not paid. The story put forth by the defendant that a self cheque of Rs. 25 lacs only had been given by plaintiff No. 1 and was not encashed, has been disbelieved. The

Plaintiff No. 1 had stated that he wanted to purchase some property for which he contacted the defendant, he being a property dealer. He asked for some proof of resources so as to attract proposed vendor. The Courts below have also found that the contention of the defendant that the cheque was not cashed by the bank is not believable because had it been the case he would have immediately brought the same to the notice of the plaintiff No. 1 and would have followed it with a notice in writing. The cheque produced on record after the Court had directed him do so is Ex. D2/CX. Upon perusal of the same a finding has been returned that there is interpolation in as much as a date has been mentioned thereupon in ball pen at a later stage. No perversity has been pointed out in these findings and none exists. Thus, the findings that earnest money stood paid at the time of execution of agreement have to be accepted. A witness who tampers with documents is not entitled to be believed.

8. For the forgoing reasons, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

18.02.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No