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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3574-2017 (O&M)
Date of Decision:08.07.2022

Ram Avtar & others

.. Appellants

Vs.

Jeeto Bai @ Jeeto Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amandeep Rana, Advocate for the appellants.

...

Manoj Bajaj, J. (Oral)

CM-8618-C-2017

This is an application under Section 151 CPC for condonation of delay of 33 days in re-filing of the present appeal.

For the reasons mentioned in the application, delay of 33 days in re-filing the appeal is condoned.

CM stands allowed.

RSA-3574-2017 (O&M)

The appellants have preferred this appeal against the judgment and decree dated 23.08.2016 passed by appellate Court in Civil Appeal No.144 of 15.09.2014, thereby affirming the judgment and decree dated 06.08.2014 passed by Civil Judge, (Junior Division), Pataudi in Civil Suit No.RBT976/2008/2013, whereby their suit for possession by way of specific performance of the contract dated 31.03.2007 was dismissed.

The facts, in brief leading to the appeal are that the plaintiffs (appellants) brought a suit for possession by way of specific performance of contract dated 31.03.2007 (Ex.P-1) against defendant Jeeto Bai @ Jeeto

Devi and pleaded that the defendant had agreed to sell her land comprised in khewat No.1368/1264, khatoni No.1463, khasra No.506(0-14), 507 (1-12), measuring 2 kanals 6 marlas to the extent of 2/9th share which comes to 10 marlas and khewat No.1356/1252, khatoni No.1451, khasra No.13 (0-2) to the extent of 1/2 share i.e. 1 marla, and khewat No.1507/1386, khatoni No.1636, khasra No.271/1 (0-16) to the extent of 1/3rd share which comes to 5 marlas, in total measuring (0-16) marlas situated at village Jatauli, Teshil Pataudi, District Gurgaon, in their favour and at the time of it's execution, not only the total sale consideration of Rs.4 lacs was paid to her, but she also delivered the possession of the property to the plaintiffs. According to the agreement, the plaintiff Nos.1 to 3, namely, Ram Avtar, Birender Singh, Surender Singh, had agreed to purchase 3/4th share, whereas, title of the 1/4th share was to be acquired by plaintiffs No.4 and 5, namely, Subhash and Suresh. As the execution of sale deed was prohibited by virtue of the instructions issued by government of Haryana, the execution of sale deed was postponed, but when the said ban was lifted, the plaintiffs approached the defendant for execution of sale deed, however, she did not respond to the request, so, the plaintiffs were compelled to serve legal notices dated 08.06.2007 (Ex. P-2) and 22.08.2007 (Ex. P-3) through Sh. M.S. Saini, Advocate. Despite the notices, there was no response received by plaintiffs from the defendant, thus, the plaintiffs instituted the civil suit, and prayed for a decree for possession by way of specific performance of agreement to sell dated 31.03.2007.

The suit was contested by defendant/respondent by filing a written statement, wherein she had taken all the possible objections including the maintainability, local standi, etc. and on merits, denied the

execution of the agreement dated 31.03.2007, who further pleaded that the instrument was a result of fraud and misrepresentation. It was highlighted that previously also, the parties had executed the agreement on 12.03.2007, however, neither the said agreement to sell has been disclosed by the plaintiffs in their plaint nor any suit was filed by them. The agreement dated 12.03.2007 was got registered on 13.03.2007 and the defendant never received the sale consideration. It is specifically pleaded that the property in question is being used by Lal Singh s/o Karan Singh, who is residing there, 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 nine issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the trial Court proceeded to decide the material issues No.1 to 3, 7 and 8 against the plaintiffs and in favour of the defendant by holding that the valid execution of agreement to sell dated 31.03.2007 is not established.

Dissatisfied with the judgment and decree dated 06.08.2014 passed by the trial Court, the plaintiffs preferred appeal bearing No.144 of 2014, however, the same was also dismissed through impugned judgment and decree dated 23.08.2016. Hence, this second appeal.

Learned counsel for the appellants has argued that the execution of the agreement Ex.P-1 is duly established as both the attesting witnesses, namely, Vijay Pal Singh PW-1 and Bharat Singh PW-4 supported the stand of the plaintiffs. He submits that the plaintiffs had already performed their part of contract and the sale deed was deferred because of the ban imposed by the State government, but despite lifting of the ban and various requests made by the appellant/plaintiffs, needful was not done by

respondent, as she did not execute the sale deed. According to him, the evidence on record, sufficiently proved that the plaintiffs are entitled to the decree of specific performance of the contract, but the trial court and First appellate Court have misconstrued the evidence and erroneously dismissed the suit and the appeal, therefore, the interference is warranted by this Court.

During the course of hearing, it is not disputed by the learned counsel that though prior to the agreement in question, an agreement to sell dated 12.03.2007 was executed, but according to him, as there was some discrepancy in the said instrument, therefore, this another agreement dated 31.03.2007 Ex.P-1 was executed on 31.03.2007 between the same parties.

After hearing the learned counsel, and examining the case file, this Court finds that the entire case of the appellants is based upon the agreement to sell dated 31.03.2007 (Ex.P-1), which is signed by only one vendee, namely, Subhash. As per the terms and conditions of the agreement, Subhash was to acquire 1/4th of the share along with his brother Suresh, whereas 3/4th of the share was to be purchased by other three plaintiffs, namely, Ram Avtar, Birender Singh and Surender Singh, but strangely none of the brothers have come forward to testify before the Court in support of the claim made in the plaint. This Court is mindful that where a claim is filed by one of the co-sharers, the same is maintainable in case the interest of the said co-sharer is not adverse to the interest of the other co-sharers, but in the present case, the plaintiffs by virtue of the agreement (Ex. P-1) had not acquired any right in the immoveable property, therefore, the evidence of the appellants relating to agreement to sell itself is deficient.

Apart from it, the other two witnesses, namely, Vijay Pal Singh (PW-1) and

Bharat Singh (PW-4) have testified differently, who also failed to prove the valid execution of agreement Ex. P-1. As per deposition of Vijay Pal Singh attesting witness of Ex.P-1, the plaintiffs got signed two agreements from him and he testified because he is plaintiffs' neighbour. Though, it is stated by him that a sum of Rs.4 lacs was paid, but since the amount mentioned in both these agreements is same, whereas, the witness has not explained that the amount was paid in respect of the subject agreement. Similarly, the other attesting witness Bharat Singh clearly stated that no money was paid in his presence to the defendant. Further, in the agreement there is no recital that previously agreement to sell dated 12.03.2007 was executed between the same parties and because of discrepancy, the said registered document was given up and this agreement is being executed.

Thus, the evidence adduced by appellants is not enough to prove the valid execution of agreement to sell dated 31.03.2007 (Ex.P-1) and the perusal of the impugned judgments passed by Civil Judge (Jr. Divn.), Pataudi as well as First Appellate Court reveal that the concurrent findings returned on the material issues are based upon proper appreciation of the evidence. As a result of this discussion, this Court is of the opinion that the appeal does not involve any substantial question of law and is devoid of merits.

Resultantly, the appeal fails and is dismissed. No costs.

08.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No