

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4183 of 2017 (O&M)
Date of decision: 11.11.2022

Chet Ram

..Appellant

Versus

Balbir Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate
for the appellant.

Mr. Deepak Kaushal, Advocate, for the respondents.

ANIL KSHETARPAL, J(Oral)

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

2. The plaintiff (Sh. Balbir Singh) filed a suit for recovery of Rs.2,40,000/- while asserting that he paid the amount to Sh. Chet Ram (defendant No.1) and Sh. Narotam Singh pursuant to the agreement to sell dated 10.05.2008. However, the aforesaid persons, namely, Sh. Chet Ram and Sh. Narotam Singh were not the owners of the property and in fact their respective wives were the owners of the property. The agreement to sell has been produced and proved on the file. As per the agreement to sell, the entire sale consideration was paid but there was no fixed date, time or period for execution and registration of the sale deed. Thus, the plaintiff while claiming that the defendants are attempting to sell the property while denying the agreement to sell, filed the suit on 30.07.2012.

3. The appellant while contesting the suit claimed that he and Sh. Narotam Singh neither entered into an agreement to sell nor they received

Rs.2,40,000/-. The agreement to sell was proved by examining PW2-Jagdev Singh alias Boota Singh, a margin witness as well as PW4-Anil Goyal, Advocate, Notary Public to prove entry no.1179 dated 10.05.2008 in his diary/register. Apart from that the plaintiff has also appeared in evidence.

4. Both the courts have found that the plaintiff is entitled to recover Rs.1,20,000/- along with the interest @ 6% from the date of agreement till its realization.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book, the judgments passed by the Courts below as well as the record which was requisitioned.

6. The learned counsel representing the appellant submits that the suit filed by the plaintiff was barred by time as the agreement to sell was entered into on 10.05.2008, whereas the suit was filed nearly after four years i.e. 30.07.2012. He further submits that the plaintiff was required to file a suit for specific performance of the agreement to sell, particularly when it is proved on the file that the appellant's wife as well as Sh. Narotam Singh's wife were present at the time of execution of the agreement to sell. Moreover, there is no agreement for return of the consideration amount between the parties.

7. This Court has considered the submission of the learned counsel representing the appellant and has analyzed his arguments.

8. Admittedly, as per the said agreement to sell, the plaintiff was entitled to get the sale deed executed as and when he desired or required. In other words, the parties agreed that the sale deed would be executed at any point in time, according to the wishes of the plaintiff. In paragraph 6 of the

plaint, the plaintiff has asserted that the defendants have started negotiating for sale of the property which has prompted them to file the suit. In such circumstances, the cause of action to file the suit would arise not on the date of agreement to sell but on the date when his entitlement to get the sale deed executed and registered came under threat.

9. As regards the second argument, it may be noted that neither Sh. Chet Ram nor Sh. Narotam Singh were the owners of the property in question. The learned counsel representing the appellant does not dispute that fact. In such circumstances, the plaintiff-Sh. Balbir Singh could not file a suit for specific performance against Sh. Chet Ram because that agreement could not be enforced.

10. As regards the last argument, it may be noted here that neither Sh. Chet Ram's wife nor Sh. Narotam Singh's wife have signed the said agreement to sell. There is no assertion that there was any oral agreement between the wives of both the aforesaid persons/parties.

11 Keeping in view the aforesaid facts, no ground to interfere with the concurrent findings of fact by the courts below is made out.

12. Dismissed.

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

November 11, 2022

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(ANIL KSHETARPAL)
JUDGE

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