

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA No.70 of 2017 (O&M)
Date of Order: 09.05.2022

Iqbal Chand

..Appellant

Versus

Dhara Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Narang, Advocate,
for the appellant.

Mr. Neeraj Madan, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the judgment and decree passed by the learned First Appellate Court, the defendant has filed the present appeal.

It is the case of the plaintiffs that he agreed to sell 52 kanals and 08 marlas of land @ Rs.18,10,000/- per acre in favour of defendant's wife as well as Smt. Raj Rani, who is the wife of the brother of the defendant. Various sale deeds were executed in order to complete the transactions. It is case of the plaintiffs that Rs.4,00,000/- was retained as security as the plaintiffs could not deliver the possession of 6 kanals land.

The defendant executed and got attested an affidavit while undertaking to pay the amount of Rs.4,00,000/- on delivery of possession upto 14.06.2012.

The defendant contested the suit while asserting that the

affidavit is false and the entire sale deeds has been paid.

The trial court dismissed the suit on the following grounds:-

1. the affidavit Ex.P8, suffers from ambiguity.
2. the description of the land measuring 6 kanals has not been disclosed in the affidavit.
3. the date of delivery of possession of 6 kanals land has not been disclosed.

In the appeal, the First Appellate Court found that the plaintiffs had executed two sale deeds on 11.11.2011. The first sale deed with respect to 16 kanals and 11 marlas was registered on the same day, whereas the second of those sale deeds was registered on 21.11.2011, when the defendant gave an affidavit while undertaking to pay the amount of Rs.4,00,000/- which was retained by the vendees on delivery of possession upto 14.06.2012. Thus, the First Appellate Court reversed the judgment and decree passed by the trial Court.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

The learned counsel representing the appellant while referring to the statements of plaintiff no.1 has submitted that the plaintiffs had admitted receipt of the entire amount at the time of registration of the sale deed. The operative part of the statement as produced by the learned counsel representing the appellant is as under:-

“I and my son Bhajan Singh had sold the land measuring 52 kanals and some marla to Balwinder Kaur and Raj Rani. I and my son had delivered the possession of above said land at the time of registry to Balwinder Kaur and Raj Rani. When sale deed was registered the entire

amount was not received. An amount of Rs.4.00 lacs was left. It is correct that sale deeds were signed after admitting its contents to be true. The sale deed which are on the file states that entire amount has been received xxxxx. No other land was sold except 52 kanals and some marla. The land measuring 1 acre, under possession, was sold to Iqbal Chand defendant and he had paid the entire amount of this land to me. I have not annexed any proof regarding having possession by Boor Singh of the land. I am not having any proof which may show that Boor Singh was in possession of this land."

It is evident that the plaintiff has specifically stated that the amount of Rs.4,00,000/- was retained by the vendees. Undoubtedly, there is some lack of clarity in the deposition of the plaintiff with regard to delivery of possession of the land sold to Iqbal Chand. However, such lack of clarity under cross-examination of a witness cannot be preferred in view of the affidavit dated 21.11.2011. There is no dispute that the family members of the defendant purchased the property from the plaintiffs. The defendant has executed an affidavit on the date of registration of the sale deed. Plaintiff no.1 has not stated that he has received the entire sale consideration under the various sale deeds executed in favour of the defendant or his family members.

In these circumstances, the documentary evidence produced is required to be preferred.

The Civil Court is required to decide the case on preponderance of probabilities. The First Appellate Court on appreciation of evidence has recorded elaborate reasons to set aside the judgment passed by the trial Court.

In view thereof, no ground to interfere is made out.

Dismissed.

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

May 09, 2022
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(ANIL KSHETARPAL)
JUDGE

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