

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.114

Case No. : RSA No. 5916 of 2019

Date of Decision : August 28, 2023

Jubair		Appellant
vs.		
Nasir (deceased) through his LRs and another		Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Parveen Kumar, Advocate
and Mr. Abhimanyu Singh, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. **CM No.16891-C of 2019** : This is application under Section 5 of the Limitation Act, for condonation of delay of 30 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 30 days in filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : Challenge in this appeal is to the concurrent finding of the learned Courts below, whereby suit of the appellant-plaintiff (hereinafter referred to as – the plaintiff) against the respondents-defendants (hereinafter referred to as – the defendants) for specific performance of contract, declaration with consequential relief of permanent injunction, has been dismissed.

3. Brief facts, as culled out from the paper book, are that the

plaintiff filed a suit pleading therein that defendant no.1, who was owner in possession of the suit property, entered into an agreement to sell dated 18.08.2003 and received a part of consideration was earnest money. The date for registration of sale deed was fixed as 15.09.2003, on which date balance amount of sale consideration was to be paid. On the stipulated date, defendant no.1 did not come for the execution of the sale deed. Defendant no.1, in collusion with defendant no.2, sold the suit property to defendant no.2. Mutation was also sanctioned in favour of defendant no.2.

4. Learned counsel for the plaintiff has argued that the agreement to sell is duly proved. The plaintiff examined Stamp Vendor namely Parkash Chand as PW-3 to prove the signatures of defendant no.1 on the agreement to sell. He has further submitted that attesting witness Nek Mohammad had already expired but Nooru was examined as PW-4 to prove the agreement. It is further argued that after executing the agreement to sell, defendant no.1 could not execute the sale deed in favour of defendant no.2. It has been further argued that defendant no.2 had purchased the property malafidely, so, defendant no.2 cannot be considered as bona fide purchaser of the suit property but the learned Courts below failed to appreciate the evidence properly.

5. I have heard learned counsel for the appellant and perused the record.

6. The agreement to sell (Ex.PW-1/B) bears attestation of three witnesses but none of these witnesses has been examined by the plaintiff.

The plaintiff admitted in the cross-examination that witness no.3 is Ismile but he further stated that he was not aware as to when witness no.3 was

written on the agreement. Although it was stated that other witness Hayat Khan – Nambardar has passed away but learned Courts below has held that there was no document on record to suggest that he has passed away. The third witness Ismile was not summoned. The plaintiff admitted in his cross-examination that agreement to sell was scribed by Deep Chand but he was not examined by the plaintiff, rather he was examined by defendant no.1 as DW-1, who denied that he had scribed the agreement in question.

7. The learned Courts below have given a concurrent finding based on the evidence brought on the file and it is not a case where evidence has not been properly appreciated or a part of the evidence has not been taken into consideration.

8. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

9. Pending applications, if any, shall stand disposed of along with this judgment.

August 28, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.