

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216

CM-10827-C-2014 in/&
RSA-4656-2014 (O&M)
Date of Decision :27.01.2023

Jatinder Kaur Sidhu

...Petitioner

Versus

Amrik Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Shruti Mandhotra, Advocate for
Mr. Kunal Dawar, Advocate for the appellant.

Mr. S.S. Chatrath, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-10827-C-2014

The present application has been filed for condonation of delay
of 365 days in filing the present appeal.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the application is allowed. Delay of 365
days in filing the present appeal is condoned.

RSA-4656-2014

In the present regular second appeal, the challenge is to order
dated 12.10.2010 passed by the trial Court by which, the suit filed by the
appellant/plaintiff for specific performance of the 'agreement to sell' dated
22.12.2004 was dismissed as well as order dated 11.01.2013 passed by the
Lower Appellate Court by which, the appeal preferred against the
judgement and decree of the trial Court dated 12.10.2010, was also

dismissed.

Learned counsel for the appellant-plaintiff argues that in the present case, the Courts below have not appreciated the evidence, which has come on record qua the specific performance of the 'agreement to sell' dated 22.12.2004. As per the appellant-plaintiff, the said agreement to sell was executed by the respondent-defendant in favour of the appellant-plaintiff regarding the land measuring 06 kanals and 18 marlas situated in Mohalla Soofi, Nakodar, District Jalandhar and according to the said agreement to sell, the appellant-plaintiff was entitled for recovery of a sum of Rs.32,00,000/- which was double of the amount of earnest money allegedly paid by the appellant-plaintiff to the respondent-defendant at the time of execution of the said agreement to sell.

As per the judgment of the Courts below, the appellant-plaintiff has not been able to prove the execution of the said 'agreement to sell' in question on the basis of the evidence led hence, the suit filed by the appellant-plaintiff had been dismissed by the trial Court vide order dated 12.10.2010, which judgment was upheld by the Lower Appellate Court vide order dated 11.01.2013.

On being asked, as to what evidence, which according to the appellant, existed on record but has not been taken into account by the trial Court as well Lower Appellate Court while rejecting the claim of the appellant-plaintiff, learned counsel for the appellant-plaintiff submits that an agreement to sell dated 22.12.2004 was duly executed, which was placed on record by the appellant-plaintiff hence, once the document with regard to the agreement to sell in question existed on file, no finding qua non-

acceptance of said document as valid document for specific performance, could have been given by the Court below so as to deny the benefit.

The said argument of the learned counsel for the appellant-plaintiff has rightly been rejected by the Court below on the ground that in order to bring a document on record, an executor needs to appear before the Court and confirm the execution of the said document and even the marginal witnesses, who have signed the said document needs to appear before the Court to prove the same.

In the present case, though, the suit was filed by the appellant-plaintiff that there was an agreement to sell, execution of which was sought in the civil suit but appellant-plaintiff himself did not step into the witness box to support her plea that there was a valid execution of the agreement to sell in question, enforcement of which is being sought by her. Apart from this, the marginal witnesses, who are stated to have signed the document were never examined to prove the execution of the said document rather one of the marginal witness has supported the claim of the defendant-respondent.

That being so, it cannot be said that the Courts below did not appreciate the evidence, which had come on record so as to return the findings. Appellant/plaintiff failed to prove the agreement to sell in question by leading cogent evidence in support. Even the appellant/plaintiff did not step into the witness box to support her claim. In such situation, it cannot be said that there exists evidence qua the execution of agreement to sell so that direction could be issued for the specific performance of the same.

Learned counsel for the appellant-plaintiff further submits that

in any case amount of Rs.16,00,000/- i.e. earnest money paid by the appellant-plaintiff, keeping in view the agreement to sell in question, should have been returned to the appellant-plaintiff, which has also not been accepted by the Courts below.

Once, the agreement to sell in question has not been proved, claiming relief on the basis of the said document does not arise. The said claim of Rs.16,00,000/- i.e. alleged earnest money is also based upon the said agreement to sell, which document has never been proved on record to have been executed by the parties concerned. Hence, it cannot be said that the findings recorded by the Courts below are not supported by the evidence on record.

Further, learned counsel for the appellant-plaintiff is required to prove that findings of the Courts below are perverse to the facts and evidence on record. In the present case, learned counsel for the appellant-plaintiff has not been able to pinpoint any perversity in the findings so recorded by the Courts below on the basis of the facts as well as evidence which had come on record.

Keeping in view the above, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

CM-10828-C-2014

Application is also dismissed.

January 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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