

RSA-653 of 2017 (O&M)

2023:PHHC:114298

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-653 of 2017 (O&M)

Date of decision: 29.08.2023

Hakam Singh

.....Appellant

Versus

Teja Singh (since deceased) represented by his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Arihant Jain, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal along with an application under Section 5 of the Limitation Act seeking condonation of delay of 324 days in filing the appeal, is directed against the judgment and decree dated 28.10.2014 passed by the Court of learned Additional Civil Judge (Senior Division), Malerkotla, whereby suit filed by the plaintiff-respondents for possession by way of specific performance of agreement to sell was decreed as well as against the judgment and decree dated 24.08.2015 passed by the Court of learned Additional District Judge, Sangrur, vide which the appeal filed by the defendant-appellant against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that the

plaintiff filed the suit for specific performance of the agreement of sale dated 23.06.2006 and writings dated 25.06.2007 and 31.10.2007 regarding land measuring 06 bighas 05 biswas, which is 125/971 share of 48 bighas 41 biswas, fully detailed in the head note of the plaint, situated at village Mahorana, Tehsil Malerkotla along with electric connection motor etc. for a sum of Rs.6,25,000/- and on payment of Rs.3,45,000/- after adjusting Rs.2,80,000/- paid as earnest money. Alternative relief of recovery of Rs.5,60,000/- along with interest @ 2% per month from the date of filing of the suit till payment was sought. Relief of permanent prohibitory injunction restraining the defendant from selling the suit land in any manner was also sought. It is mentioned in the plaint that the defendant agreed to sell the suit land owned and possessed by him @ Rs.1,00,000/- per bigha and received Rs.2,50,000/- from the plaintiff as earnest money on 23.06.2006 and agreed to execute and get registered the sale deed upto 25.06.2007. He also agreed to hand over possession of the suit land at the time of execution and registration of sale deed. The agreement of sale was reduced into writing and was signed by the defendant. His son also made an endorsement that his father has received Rs.2,50,000/- in cash in his presence. Photographs of the parties were also affixed on the agreement. Later on, defendant showed his inability to execute the sale deed upto 25.06.2007 and requested to extend date of execution and registration of the sale deed. The plaintiff accepted the request and with mutual consent, the date was extended from 25.06.2007 to 31.10.2007 and a writing was made on the overleaf of the agreement dated

23.06.2006, which was signed by the parties and attested by the witnesses. Later on, defendant again showed his inability to execute the sale deed upto 31.10.2007 and requested to extend the date of execution and registration of sale deed. The date was extended from 31.10.2007 to 25.04.2008 with mutual consent and an agreement to this effect was reduced into writing on 31.10.2007. The defendant also received a sum of Rs.30,000/- as further earnest money from the plaintiff and admitted having received Rs.2,80,000/- from the plaintiff. This agreement was also signed by the parties and attested by the marginal witnesses. Photographs of the parties were also affixed on the agreement dated 31.10.2007. The plaintiff always remained ready and willing to perform his part of the agreement of sale dated 23.06.2006, writing dated 25.06.2007 and agreement dated 31.10.2007. He tendered the remaining sale consideration and other expenses of execution and registration of sale deed and requested the defendant to execute the sale deed and deliver possession as per the terms and conditions of the agreements and writing, but the defendant had been putting off the matter and was not ready to perform his part of the contract. The plaintiff remained present in the office of the Sub Registrar, Malerkotla, on 25.04.2008 along with remaining sale consideration and expenses for registration of sale deed, but the defendant did not come present. The plaintiff got his presence marked by executing an affidavit, which was attested by Sub Registrar/Executive Magistrate, Malerkotla. Even after 25.04.2008, the plaintiff requested the defendant a number of times to execute the sale deed and deliver possession, but

in vain. The defendant rather started threatening to alienate the suit land in violation of the terms of the agreements and writing to cause loss and injury to the plaintiff.

3. Upon notice, defendant appeared and filed written statement taking objections that the suit is not legally maintainable in the present form; that the plaintiff has suppressed the material facts and has not come to the Court with clean hands; that due to old-age, the defendant is suffering from various ailments. He took loan of Rs.1,00,000/- from the plaintiff and had returned Rs.70,000/- to the plaintiff. Rs.30,000/- were due towards him. The plaintiff was insisting for payment of Rs.30,000/-, so he filed this suit to put pressure on the defendants. On merits, all the averments of the plaint regarding agreement to sell the suit land and execution of the writings have been denied. Receipt of earnest money is also denied. It is stated that the defendant has never executed the alleged agreement in favour of the plaintiff.

4. Replication was filed, wherein the averments of the plaint were reiterated and those of the written statement were controverted.

5. From the pleadings of the parties, following issues were framed and recorded by the learned Trial Court:-

- 1) Whether the defendant being owner, entered into an agreement to sell dated 23.06.2006 with the plaintiff for the sale of his property as alleged in the plaint?
OPP
- 2) Whether a sum of Rs.2,80,000/-as earnest money was received by the defendant from the plaintiff?
OPP

- 3) Whether the plaintiff was/is ready and willing to perform his part of agreement? OPP
 - 4) Whether plaintiff is entitled to possession through specific performance of the said agreement to sell? OPP
 - 5) Whether the plaintiff is entitled to for the alternative relief of recovery of the suit amount? OPP
 - 6) Whether the plaintiff is entitled to injunction as prayed for? OPP
 - 7) Whether the suit is not maintainable in the present form? OPD
 - 8) Whether the plaintiff has not come to the court with clean hands and has suppressed material facts? OPD
 - 9) Relief.
6. Parties led oral as well as documentary evidence in support of their respective contentions.
7. After hearing arguments and after appreciating evidence on record, trial Court decreed the suit of plaintiff vide judgment and decree dated 28.10.2014.
8. Aggrieved against the judgment and decree of the trial Court, defendant-appellant preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 24.08.2015.
9. Learned counsel for the appellant contended that findings of both the Courts below are perverse and erroneous, thus, not sustainable in the eyes of law. He further contended that Courts below failed to appreciate that plaintiff-respondent(s) failed to prove readiness and willingness to perform his part of the contract, thus, he was not entitled to a decree of specific performance. He further contended that

the Courts below have decreed the suit of the plaintiff-respondent(s) without considering the oral as well as documentary evidence on record.

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

11. To support his case, plaintiff examined PW1 Darshan Singh, the marginal witness, and he has supported the case of the plaintiff regarding execution of agreements and writing Ex.P1 to Ex.P3 and payment of earnest money of Rs.2,80,000/- to defendant-appellant. This Court has perused the Ex.P1 to Ex.P3 and all the agreements/writings bear the signatures of the defendant/appellant. Perusal of agreement Ex.P1 reveals that Rachhpal Singh son of defendant-appellant Hakam Singh also made an endorsement in token of his father having received Rs.2,50,000/- as earnest money from the plaintiff in his presence. Vide agreement Ex.P3, the defendant received another sum of Rs.30,000/- from the plaintiff as additional earnest money. This document has been proved by PW Amar Singh Nambardar. The execution of the writings Ex.P1 to Ex.P3 prove that the defendant had agreed to sell the suit land to the plaintiff @ Rs.1,00,000/- per bigha and had received Rs.2,80,000/- as earnest money. It is also proved that the date for execution and registration of sale deed was extended from time to time and vide writing Ex.P3, it was extended upto 25.04.2008 with the consent of the appellant. The evidence of the witnesses of the plaintiff-respondent has also proved that the agreements Ex.P1 to Ex.P3 bear joint photograph of the

plaintiff and the defendant. The appellant could not rebut the evidence of the plaintiff-respondent nor could explain about his photograph appearing on these documents. Plaintiff has proved on record that he always remained ready and willing to get the sale deed executed and registered in his name and he got his presence marked by executing affidavit Ex.P4, which is attested by the Executive Magistrate, Malerkotla. The scribe of writings Ex.P1 to Ex.P3 Pawan Kumar Sharma has also supported the case of the plaintiff regarding execution of these documents by the defendant in favour of the plaintiff. He has proved the entries of his register Ex.P5 and Ex.P6, wherein these documents were entered. The Courts below have rightly observed that evidence of plaintiff Teja Singh, who has produced his affidavit Ex.PW3/A and who could not appear for his cross-examination due to his death has also proved the case of the plaintiff regarding execution of agreements and writing Ex.P1 to Ex.P3 and affidavit Ex.P4. His evidence is admissible and cannot be discarded on the ground that he did not appear for his cross-examination as he could not appear for cross-examination due to his death and his LRs had to be impleaded in his place. PW Jarnail Singh son of Teja Singh has also deposed as per the case of the plaintiff by producing his affidavit Ex.PW5/A. Further perusal of the judgments of the Courts below shows that none of the witnesses of the plaintiff stated anything in the cross-examination, which could prove that the agreement Ex.P1 was a money transaction or that the defendant had borrowed Rs.1,00,000/- from the plaintiff and had returned Rs.70,000/- to the plaintiff. Sole statement of the

appellant without any cogent documentary evidence that he had not executed the agreement of sale and writing Ex.P1 to Ex.P3 does not prove his case. Plaintiff-respondent(s) have fully proved their case *qua* execution of agreement to sell by defendant-appellant in favour of the plaintiff.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. Present appeal has been filed after a delay of 324 days. Learned counsel for the appellant has failed to give plausible reasons to condone such a huge delay in filing the appeal. In view of the above, present appeal is dismissed on merits as well as on the ground of limitation.

15. Pending application(s), if any, stand disposed of accordingly.

29.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No