

2024:PHHC:008273

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

1.RSA-2359-2019 (O&M)

Gian Chand (since deceased) through his Lrs Jaisin @ Jai Singh

....Appellant

Versus

Gaje Singh and others

..Respondents

2.CR-5146-2023 (O&M)

Gian Chand (since deceased) through his Lrs Jaisin @ Jai Singh

....Petitioner

Versus

Gaje Singh and others

..Respondents

Date of decision: 19.01.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.P.S.Sullar,
Mr. Tejeshwar Singh Sullar and
Mr. Surinder Dhull, Advocates for the appellant
in RSA-2359-2019 and for the petitioner in
CR-5146-2023

Mr. Vansh Malhotra, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. Two connected cases; one RSA-2359-2019 and second CR-5146-2023 shall stand disposed of by this common order.

2. In the Regular Second Appeal, the defendant through his legal representatives, assails the correctness of the concurrent findings of facts arrived at by the courts below, while decreeing the plaintiff's suit for the specific performance of the agreement to sell with a consequential relief of permanent injunction. The defendant, while contesting the suit, claimed that he never executed any agreement to sell nor received earnest money. It was claimed that the plaintiff is a property broker and the defendant (appellant) signed on the blank stamp papers in order to purchase some other property.

3. In order to prove the execution of the agreement to sell, the plaintiff appeared in evidence as PW1. He was cross-examined by the learned counsel representing the defendant. During the cross-examination, the plaintiff was requested to explain the source of the earnest money. He explained that he had received some amount as arrears whereas the remaining amount was paid by him from the amount lying at his home. The plaintiff also examined Mrs. Neelam Aggarwal, Notary Public as PW3. The notary public has deposed that the defendant signed in her notarial register when she notarized the agreement to sell.

4. While appearing in evidence as DW1, the defendant, stated that he wanted to sell his land in order to purchase a commercial property. On being questioned with regard to his signatures, in the register maintained by the Notary Public, he failed to furnish any plausible explanation.

5. Keeping in view the aforesaid facts, both the courts decreed the suit.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the photocopy of the record, which was produced by the learned counsel representing the appellant.

7. Learned counsel representing the appellant contends that the scribe of the agreement to sell has not been examined by the plaintiff and he has failed to prove the source of Rs.18,77,000/- which was alleged to have been paid as the earnest money.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. The execution of the agreement to sell has been proved by the plaintiff, the Notary Public and PW5 marginal witness- Birbal Singh. In these circumstances, the examination of the scribe of the agreement to sell was not necessary.

10. As regards the second contention of the learned counsel representing the appellant, it may be noted that the agreement to sell has been scribed on a non-judicial stamp paper of Rs.100/-. The appellant has signed on page no.1 twice over. The defendant has also signed the second page of the agreement to sell. He has signed in a manner on the document that half of his signatures are on the agreement to sell whereas the remaining half of the signatures appear on the revenue stamp, which is fixed in token of the receipt of the payment. The appellant with his

own hand has written that he has received Rs.18,77,000/-. As already noticed the plaintiff appeared in evidence and he disclosed the source of his property. Moreover, when the plaintiff appeared in evidence, he disclosed the source of the amount paid as the earnest money.

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

12. Hence, RSA-2359-2019 stands dismissed.

13. In CR-5146-2023, the judgment debtor assails the correctness of the order passed by the Executing Court while dismissing his objection petition.

14. Learned counsel representing the judgment debtor contends that the suit was decreed on 08.07.2014, however, the decree-holder failed to deposit the amount, within the prescribed time. He submits that the first execution petition was dismissed in default and the second execution petition was filed on 03.01.2019. He submits that in view of the aforesaid conduct of the decree-holder, the Executing Court has erred in dismissing the petitioner's objection petition.

15. On the other hand, the learned counsel representing the respondent submits that it is the defendant (the appellant herein) who filed the first appeal, which was decided on 19.07.2018. Thereafter, he filed a Regular Second Appeal, which is being disposed of by this common order. He submits that as directed by the trial court, the decree holders were required to pay the amount to the appellant, however, he

refused. Hence, immediately the execution petition was filed. In the meantime, the appellant filed the first appeal, which remained pending for 4 years. He submits that there was no delay on the part of the decree-holder to deposit the amount.

16. This Court has considered the submissions made by the learned counsel representing the parties.

17. It is evident that the trial court, while decreeing the suit on 08.07.2014, passed the following conditional decree:-

“It is ordered that the suit of the plaintiff succeeds and the same is decreed to the effect that the defendant is directed to get the sale deed executed and registered in respect of suit land as per the terms and conditions of the agreement Ex.P1, with a period of two months from today after getting the balance sale consideration amount. The defendant is also restraining from selling, alienating, mortgaging and transferring the suit land to any other person. In case, the defendant fails to get the sale deed executed and registered with a period of two months from today, then the plaintiff shall be at liberty to get the sale deed executed and registered through the process of court. No order as to cost.”

18. It is apparent from the careful perusal of the trial court's order that it did not direct the plaintiff to deposit the amount in the court if the defendant fails to perform his part within the stipulated time period of two months. As already noticed, the decree-holder filed the

execution application in September, 2014. However, it is the appellant who filed the first appeal. The matter again remained subjudice.

19. It is evident that the matter remained pending on account of filing of the repeated appeals by the judgment debtor. It has been brought to the notice of the Court that the entire amount has already been deposited by the decree-holder on 28.07.2023.

20. Keeping in view the aforesaid facts and discussion, there is no substance in the revision petition. Hence, the revision petition is also dismissed.

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

19.01.2024
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**(ANIL KSHETARPAL)
JUDGE**

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