

RSA-1702-1993 (O&M)

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

RSA-1702-1993 (O&M)

Reserved on : 05.03.2024

Date of Decision : 11.03.2024

Sher Singh (deceased) through LRs

....Appellant

VERSUS

Pannu Lal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.S. Dhandi, Advocate for the appellant.

Mr. Vikas Singh, Advocate for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 06.05.1993 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein - Sher Singh - filed a suit against Punnu Ram, Gurmeet Singh and Gurbachan Singh (respondents herein) on the allegations that on 31.05.1984 defendant-respondent No.1 - Punnu Ram - entered into an agreement to sell the suit land for a total sale consideration of Rs.15,000/-. Rs.4,000/- was paid as earnest money and the possession was delivered to the plaintiff-appellant. Rs.2,000/- was again paid on 01.12.1984 and the sale

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deed was to be executed on 30.05.1986. It was further averred that the plaintiff-appellant remained ready and willing to perform his part of the contract, but the defendant-respondent No.1 started to negotiate to sell the land elsewhere. When the plaintiff-appellant learnt about the intention of defendant-respondent No.1, a suit for permanent injunction was filed for restraining the defendants from alienating or transferring the suit land in any manner. It was further averred that defendant-respondent No.2 - Gurmeet Singh - in connivance with defendant-respondent No.1 filed a suit for permanent injunction on the basis of some subsequent and afterthought agreement to sell for restraining him from transferring the land in any manner. When the plaintiff-appellant learnt about the pendency of the civil suit, he filed an application on 25.02.1986 for being impleaded as a party. Defendant-respondent No.1 gave a statement that he was ready to get the sale deed executed and as a result of the same the suit was withdrawn by the plaintiffs therein. It was further the case set up that the defendant-respondents were all aware of the injunction granted by the Court in favour of the plaintiff-appellant. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract but defendant-respondent No.1 got a sale deed executed on 04.03.1986 in favour of defendant-respondent Nos.2 and 3 for a sale consideration of Rs.19,000/-. The suit was contested by the defendant-respondents denying the agreement to sell. In the replication the pleadings of the plaint were reiterated and averments made in the written statement were denied.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether defendant No.1 agreed to sell the suit land in favour of plaintiff vide agreement dated 31.5.1984 and received Rs.4,000/- as earnest money ? OPD
2. Whether the said agreement is the result of fraud and misrepresentation ? OPD
3. Whether the plaintiff always remained ready and willing to perform his part of the contract ? OPP
4. Whether the suit has been filed within time ? OPP
5. Whether the sale deed dated 4.3.86 is inoperative null and void and in effective qua the rights of the plaintiff ? OPP
6. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 28.11.1989. Aggrieved by the same, an appeal was preferred by the defendant-respondent Nos.2 and 3 before the First Appellate Court which appeal was allowed vide judgment and decree dated 06.05.1993. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned counsel for the plaintiff-appellant would contend that the First Appellate Court has erred in reversing the judgment and decree passed by the Trial Court only on the ground that the date mentioned in the agreement to sell is 29.05.1984 whereas the stamp-paper was purchased on 31.05.1984. The learned counsel would further contend that the same was a mere typographical mistake which stood explained by the scribe by producing his register (Ex.P5).

6. *Per contra* the learned counsel for the defendant-respondents

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would contend that the date in the agreement is 29.05.1984, however, the stamp-paper was purchased on 31.05.1984. It is further the contention of the learned counsel that extract of the register (Ex.P5) is a standalone entry and neither the previous nor the subsequent entries have been produced. It is further the contention of the learned counsel that no evidence was produced by the plaintiff-appellant to show that he was ready and willing with the balance sale consideration.

7. I have heard the learned counsel for the parties.

8. In the present case the agreement to sell is dated 29.05.1984, however, the stamp-paper was purchased on 31.05.1984. The learned counsel for the plaintiff-appellant has tried to explain the discrepancy and has argued that the Deed Writer had explained the discrepancy and hence nothing would turn on the date as mentioned in the agreement to sell and the agreement to sell was executed only on 31.05.1984. A perusal of the statement of PW6 Karam Singh, Deed Writer reveals that it is nowhere being stated by the Deed Writer that the said date was written by mistake and infact it has been stated in his cross-examination that the matter about 29.05.1984 did not come to his mind. Attesting Witness PW4 - Amar Nath - has not explained the discrepancy in the date of the agreement and purchase of stamp-paper. Ex.P5 is an extract of the Deed Writer's register with a standalone entry and neither the previous nor the subsequent entries have been produced on the record which could have possibly been a determining factor. Further still, there is not an iota of evidence to show that the plaintiff-appellant remained ready and willing with the balance consideration. Only a bald statement has been made that the plaintiff-

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appellant was always ready and willing. The Trial Court while decreeing the suit had held that since a suit was filed by the plaintiff-appellant for restraining the defendant-respondents from alienating and transferring the land, hence filing of the suit showed that the plaintiff-appellant was always ready and willing to perform his part of the contract. On a pointed query by the Court as to whether any evidence was led regarding availability of the funds with the plaintiff-appellant to pay the balance consideration it has candidly been admitted by the learned counsel for the plaintiff-appellant that there is no evidence on the record.

9. In view of the above, I do not find any irregularity or infirmity in the judgment and decree dated 06.05.1993 passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.03.2024
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO