

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-112-1994(O&M)
Date of decision :02.04.2024

Avtar Singh ...Appellant

Vs.

Mohinderpal Singh and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amanpriye Jain, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate with
Mr. Sanchit Malik, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

1. Brief Facts of the case:-

1.1 In this regular second appeal, the defendant No.1 assails the correctness of the concurrent findings of the fact arrived at by the Courts below while decreeing the plaintiff's suit for possession by way of specific performance of the agreement to sell.

1.2 In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

1.3 Sh. Avtar Singh, the appellant was owner of 25 kanals 6 marlas land. He entered into an agreement to sell on 23.11.1984, in favour of the plaintiff (respondent herein) on receipt of earnest money of Rs. 30,000/-. The land measuring 25 kanals and 6 marlas was agreed to be sold @ Rs.25,000/- per acre (8 kanals). As per agreement to sell, the sale deed was to be executed on or before 10.06.1986. The plaintiff visited the office of the Sub Registrar on

05.06.1986 and 10.06.1986 and got his affidavit attested, however, the defendant did not come before the office of the Registrar. The plaintiff also sent a notice to the defendants on 27.05.1986. The suit property was already mortgaged with the defendants No. 2 to 4 against a sum of Rs, 25,000/-. The defendant while contesting the suit stated that the plaintiff is a commission agent and the defendant used to sell his crops through the plaintiff and he may have obtained his thumb impression by playing fraud as he is uneducated.

1.4 Upon appreciation of evidence, both the Courts have decreed the suit.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned record of the lower Courts.

2.2 Learned counsel representing the appellant has made the following submissions:-

1. The plaintiff is not proved to be ready and willing as there was a gap of 1 year and 7 months between the date of execution of the agreement to sell and the date fixed for execution of the sale deed.
2. The plaintiff has not produced any evidence to prove that he was ready and willing to perform his part of the contract.
3. The plaintiff is a commission agent and therefore, the suit should not have been decreed.
4. The amount of sale consideration is inadequate.

5. The plaintiff was not possessed of sufficient means to honour the agreement to sell and he relies upon the judgment passed by the Supreme Court in “*U.N. Krishnamurthy (Since Deceased) Thr. Lrs. Vs. A.M. Krishnamurthy*”, 2022(3) RCR(Civil) 479.

2.3 *Per contra*, learned counsel representing the respondent has drawn the attention of the Court to agreement to sell (Ex. P.4), the cross-examination of the defendant therein. He admits his signatures on the agreement to sell as well as stamp papers purchased by him and the register of the deed writer. He further submits that when the plaintiff appeared in evidence, the defendant's counsel never suggested that the plaintiff was not ready and willing or he was not possessed of sufficient means to honour the agreement to sell.

3. **Discussion by this Court:-**

3.1 This Court has considered the submissions of the learned counsel for the parties.

3.2 The crucial document in the present case is agreement to sell dated 23.11.1984, which is exhibited as P-4 in the trial Court's record. It is evident that it has been scribed on a non-judicial stamp paper of Rs. 2.25. It runs into two pages. On 23.11.1984, the plaintiff purchased the stamp paper from the stamp vendor for execution of the agreement to sell. He has appended his signatures on the endorsement made by the stamp vendor in the agreement to sell. The defendant has also appended his signatures on both the pages of the agreement to sell. He has also appended his signatures in the register of the scribe, where there is entry of agreement to sell between the plaintiff and the defendant. Moreover, on the one hand, the defendant has stated in the written

statement that the plaintiff may have obtained his thumb impression by playing fraud, however, while appearing as witness, he admits his signatures on the agreement to sell. It shall be noted here that on the first page of the agreement to sell, the defendant has signed on the left hand margin, whereas, on the second page, he has signed where the recitals of the agreement to sell come to an end. It is evident that the stamp paper was purchased on 23.11.1984, when the agreement to sell was executed. Thus, the appellant's defence is incorrect. Moreover, the plaintiff while filing the suit has claimed that he was always ready and willing to perform his part of the contract. The suit was filed within a period of one and half month from the date the sale deed was to be executed. The plaintiff appeared in evidence and stated that he was ready and willing to perform his part of the contract and he had sufficient means to pay the remaining part of the sale consideration. The correctness of the aforesaid statement was not challenged by the defendant's counsel while cross-examining the plaintiff.

3.3 The defendant has also failed to prove that he used to sell his crops through the plaintiff. There is no suggestion to the plaintiff in this regard. The plaintiff has stated that he owns a parcel of land, which adjoins the defendant's land.

3.4 Moreover, upon appreciation of evidence the concurrent findings of fact have been arrived at. The plaintiff has produced overwhelming evidence in support of his case and has also examined the stamp vendor and the scribe.

3.5 It is also proved that the defendant went to the Patwari and got issued certified copy of *jamabandi* of the land in question. This Court has carefully read ***U.N. Krishnamurthy's case*** (Supra). In that case, the Supreme

Court has emphasized the requirement of plaintiff to prove that he was always ready and willing to perform his part of the contract as provided under Section 16(c) of Specific Relief Act. As per the facts and evidence on record, the aforesaid requirements stand fulfilled.

4. **Decision:-**
- 4.1 Keeping in view the aforesaid discussion, no ground to interfere is made out.
- 4.2 Dismissed.

02.04.2024

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No