

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2652-1994(O&M)

Date of decision :14.03.2024

Vinod Kumar

...Appellant

Vs.

Tarlok Singh (deceased) through LRs

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manish Jain, Advocate and
Mr. Divanshu Jain, Advocate for
Mr. Prateek Sodhi, Advocate
for the appellant.

Mr.V.K. Jindal, Sr. Advocate with
Mr. Vijayveer Singh, Advocate and
Mr. Pankaj Gautam, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

1. This is plaintiff's second appeal against the judgment and decree passed by the First Appellate Court, wherein the judgment and decree passed by the trial Court was reversed.

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

3. The plaintiff (Sh. Vinod Kumar) claims that Sh. Tarlok Singh (now deceased) executed the agreement to sell in his favour on 07.08.1986 with respect to a plot measuring 54' x 40' on receipt of Rs. 10,000/- as earnest money against total consideration of Rs.36,000/-. It was agreed that the sale deed would be executed on 07.10.1986. The plaintiff, at the first stage, filed a suit for grant of injunction and subsequently, filed the suit for the specific performance of the agreement to sell on 06.03.1987. The defendant, while

contesting the suit, claimed that no agreement to sell was executed. In fact, his thumb impression/signatures were obtained on mis-representation as he was under the medical treatment of the plaintiff. It was also asserted that the plot is worth Rs.1,00,000/- and therefore, there was no reason to sell it for a sum of Rs.36,000/-.

4. The trial Court decreed the suit, however, the First Appellate Court upon re-appreciation of the evidence, reversed the judgment and decree passed by the trial Court. The First Appellate Court has broadly recorded the following reasons, while reversing the judgment of trial Court:-

- i. The professional scribe did not enter the agreement to sell in his note-book, which is regularly maintained by a professional scribe and he has failed to render any justification for failing to make entry in his note-book.
- ii. There are multiple interpolation/cutting in the agreement to sell, which are not signed or thumb marked by the defendant.
- iii. In the agreement to sell, it is recorded that the entire earnest money has been paid with currency notes of denomination of Rs. 100/-, whereas the defendant has deposited Rs. 9,900/- with different denomination.
- iv. The defendant is an illiterate person and the plaintiff was more than eager to prove his case.

5. On appreciation of evidence, the First Appellate Court has come to a conclusion that the real person behind the execution of agreement to sell is someone else and not the plaintiff.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book, alongwith the requisitioned record.

7. Learned counsel representing the appellant, while drawing the attention of the Court to the agreement to sell submits that an interpolation/cutting are insignificant because that is only with reference the property of a neighbour and the First Appellate Court has made out a new case for the defendant. He further submits that the plaintiff has proved the agreement to sell and both the marginal witnesses have also proved the agreement to sell.

8. On the other hand, the learned Senior counsel representing the respondent, apart from defending the case, has drawn the attention of the Court to the paper-book. He submits that this appeal has been filed by Sh. Vinod Kumar (plaintiff) through Sh. Raj Kumar (on the basis of Power of Attorney) son of Sh. Ghansyam Dass, who was the attesting witness of the agreement to sell. He submits that Sh. Ghansyam Dass is the next door neighbour of the defendant and he has been instrumental in getting the documents manipulated. He further submits that the First Appellate Court has exercised discretion, which should not be interfered by this Court.

9. This Court has considered the submissions made by the learned counsel representing the parties and gone through the record.

10. PW1-Fakir Chand is a professional scribe, who practices in Tehsil Bilaspur. He was cross-examined at length with regard to absence of entry in his note-book. He failed to give any justifiable explanation. He admits that on that day, he scribed 4-5 documents, which were duly entered in his register, however, he failed to justify as to why the entry was not made in his note-book. It is evident that the agreement to sell is scribed on two non-judicial stamp papers of Rs.2.25 paise. This stamp paper has been purchased by one Naresh

Kumar. The defendant- Sh.Tarlok Singh has not thumb marked the stamp paper in token of its purchase. There is only one signature and thumb impression of Sh. Tarlok Singh at the bottom of first page. Sh. Tarlok Singh has signed in Gurmukhi language whereas, the agreement to sell is scribed in Devanagari script. Thus, it is evident that Sh. Tarlok Singh was not much educated. Furthermore, it has come in evidence that Sh. Tarlok Singh was allegedly paid Rs. 10,000/-, which was consisting Rs.100/- currency notes, whereas, he deposited Rs. 9,900/- with 89 currency notes of Rs. 100/- denomination and 18 currency notes of Rs.50/- denomination and 5 currency notes of Rs.20/- denomination.

11. Keeping in view the aforesaid facts, this Court is of the opinion that at this stage, it would not be appropriate to grant relief of specific performance, particularly when the agreement to sell was entered into 38 years ago.

12. Keeping in view the aforesaid facts, the decree passed by the First Appellate Court is substituted by a decree for the grant of alternative relief to the plaintiff. There shall be decree for recovery of earnest money of Rs.10,000/- alongwith interest @ 9% per annum from the date of the agreement to sell till its repayment in favour of the plaintiff and against the defendant.

13. The appeal is disposed of.

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

14.03.2024

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Whether speaking/reasoned :

Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes

No

Yes

No