



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.634 of 1994 (O&M)

Date of Order:08.05.2024

Shabeera and another

.Appellants

Versus

Smt. Aki Devi (Deceased) through Lrs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. I.P.S.Kohli, Advocate
for the appellant (Through VC)

Mr. Y.S.Turka, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. The learned counsel representing the appellants has informed the court about the death of the appellants, however, he submits that he is prepared with the case.

2. As per the amendment in Order XXII Rule 3 CPC, within the time limited by law, no application is made under sub-rule (1), the suit shall not abate and as against the plaintiff and the judgment may be pronounced notwithstanding his or her death which shall have the same effect before the death took place and the contract between the deceased and the pleader in that event shall continue to subsist.

3. In this regular second appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for possession by way of specific performance while ordering refund of Rs.2000/- along with interest.



4. The execution of the agreement to sell dated 11.02.1987, is admitted between the parties. As per the agreement to sell, the plaintiffs paid Rs.9,000/- to the defendant Smt. Aki Devi, whereas the defendant claims that she received Rs.2,000/- and not Rs.9,000/-. The sale deed was to be executed and registered on or before 22.05.1987. Smt. Aki Devi sent a notice to the plaintiffs intimating that she has received Rs.2000/- and she is prepared to execute the sale deed if the plaintiffs are prepared to pay the remaining amount. The plaintiffs did not send any reply. On 22.05.1987, the plaintiffs and the defendants attended the office of the Registrar, however, the sale deed was neither executed or registered

6. Both the courts have found that the plaintiffs were not ready and willing to perform their part of the contract.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

8. The learned counsel representing the appellants has made the following submissions:-

(1) That the failure of the plaintiffs to examine two marginal witnesses and the scribe of the agreement to sell would not make any difference because the execution of the agreement to sell is admitted. He further submits that at the stage of rebuttal, efforts were made to examine the two marginal witnesses, however, the plaintiffs were not permitted.

(2) The plaintiffs also visited the office of the Registrar on 22.05.1987



(3) The Sarpanch of the village has stated that there was no meeting of the panchayat to resolve the controversy between the parties.

9. This court has considered the submissions of the learned counsel representing the parties.

10. It is evident that the defendant Smt. Aki Devi on 25.04.1987 i.e. approximately one month before the date on which the sale deed was to be executed, sent a notice to the plaintiffs who did not bother to reply. The plaintiffs in order to prove that Rs.9,000/- was paid particularly when the defendant has claimed that only Rs.2000/- has been paid to her, should have examined the two marginal witnesses and the scribe of the agreement to sell. These witnesses were required to examine in affirmative evidence. Hence, it is the plaintiffs who are at fault. They could not be examined in rebuttal evidence particularly when the defendant had already led her evidence. The period of 37 years have elapsed from the date the agreement to sell was executed. Both the courts have exercised discretion which is not proved to be suffering from any substantive error or perversity.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Dismissed.

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

May 08, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO