



112

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

RSA-5389-2019 (O&M)

Date of Decision : 06.11.2024

Om Parkash & Ors

... Appellant(s)

Versus

Khem Chand (deceased) through LRs & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate and
Mr. Hitesh Verma, Advocate for the appellants.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 25.08.2015 passed by the Trial Court dismissing the suit and the judgment and decree dated 14.02.2019 passed by the First Appellate Court dismissing their appeal.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for possession by way of specific performance of the agreement to sell dated 24.09.2007 with respect to land comprised in Khewat No.731 Khatoni No.800 Rectangle No.111 Killa No.25/1 measuring 04 kanals 04 marlas as depicted in the jamabandi for the year 2004-05 situated with the revenue estate of Village Gudha, Tehsil and District Mahendergarh alongwith relief of permanent injunction. It was averred in the plaint that defendant-respondent No.1 himself and on behalf of defendant-respondent Nos.2 to 7 executed an agreement to sell dated 24.09.2007 of the suit land for a consideration of Rs.45,000/- in the presence of the witness. Rs.42,000/- was paid in cash as earnest money. It was further

averred that the agreement to sell was read over and explained to defendant-respondent No.1 who after admitting the contents appended his thumb-impressions on the same (wrongly mentioned as signatures in the judgment passed by the Trial Court). The remaining amount was to be paid at the time of execution of the sale deed which was 15.06.2008. It was further averred that at the time of execution of the agreement to sell, the name of defendant-respondent No.2 was entered but due to some reason he did not appear and on the assurance of defendant-respondent No.1 for securing the presence of the remaining defendant-respondent Nos.2 to 7 at the time of execution of the sale deed, it was executed. It was agreed between the parties that in case of default by the defendant-respondents, the plaintiff-appellants would have a right to get the sale deed executed through the Court and in that eventuality the defendant-respondents would be liable for all costs and damages. It was further the case set up that on 15.06.2008 the plaintiff-appellant went with the balance sale consideration of Rs.3,000/- and the necessary expenses for stamp and registration to the Sub Registrar's Office and got his presence also marked. However, the defendant-respondents did not turn up. Thereafter the present suit was filed on 14.06.2011. Upon notice, the defendant-respondents did not appear and were proceeded against *ex parte*. The plaintiff-appellants led their evidence. On the basis of the evidence the Trial Court dismissed the suit vide judgment and decree dated 25.08.2015. Aggrieved by the same, an appeal was preferred which was also dismissed by the First Appellate Court vide judgment and decree dated 14.02.2019. Hence, the present regular second appeal.

3. Learned senior counsel appearing for the plaintiff-appellants

would contend that the agreement to sell as well as the payment of earnest money was duly proved and that the plaintiff-appellants had been ready and willing since he appeared and got his presence marked, which facts were all duly proved before the Court, and hence the suit ought to have been decreed. It is further the contention of the learned senior counsel that in the absence of any defense on the record and since the agreement to sell was proved, the suit ought to have been decreed.

4. I have heard the learned senior counsel for the plaintiff-appellants.

5. In the present case the agreement to sell is dated 24.09.2007 qua the land measuring 04 kanals 04 marlas. The agreement to sell was alleged to have been entered into by defendant-respondent No.1 for himself and on behalf of defendant-respondent Nos.2 to 7 as per the case set up by the plaintiff-appellants herein. The target date was 15.06.2008 and the suit itself was filed on 14.06.2011 i.e. the last date of limitation. There is no explanation forthcoming as to why after having paid almost the entire amount of consideration i.e. Rs.42,000/- out of Rs.45,000/-, the plaintiff-appellants waited till 14.06.2011 to file the suit. Further still, a perusal of the agreement to sell reveals that the same states that the possession had been handed over, however, the suit itself was for possession by way of specific performance. It would be strange that a person who has paid almost the entire sale consideration and is alleged to have taken possession would file a suit for possession that too after waiting till the very last date of limitation. The agreement to sell itself, as per the case set up by the plaintiff-appellants, was alleged to have been executed by defendant-respondent No.1 for himself

and on behalf of defendant-respondent Nos.2 to 7. The agreement is thumb-marked by defendant-respondent No.1. Though the name of Manohar Lal (defendant-respondent No.2) is mentioned, however, neither his signatures nor thumb-impressions have been appended. The other co-sharers have not signed the said agreement to sell. There is no reference to any general power of attorney in favour of defendant-respondent No.1 on behalf of the remaining defendant-respondent Nos.2 to 7. One of the witnesses i.e. Raj Kapoor has appended the date as 23.09.2007 on the agreement to sell which is alleged to have been executed on 24.09.2007. Even though there is no defense since the defendant-respondents had all been proceeded against *ex parte*, however, the Court cannot blindly decree a suit merely because there is no defense on the record. The Court has to be satisfied on the basis of the evidence led by the plaintiff-appellants that the case as set up is duly proved in accordance with law which has not been done in the present case.

6. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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