

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

RSA-2194-2010 (O&M)
Date of decision: 13.03.2024

BALBIR SINGH

..Appellant

Versus

SUKHDEV SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Singla, Advocate
for the appellant.

Mr. Sandeep Punchhi, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. Brief facts and introduction:-

1.1 This is the plaintiff's regular second appeal against the concurrent findings of the fact arrived at by the Courts below while granting alternative relief of refund of earnest money.

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

1.3 The defendant Sh. Sukhdev Singh was the owner of a land measuring 15 kanal and 8 marlas. The aforesaid land was already mortgaged with the State Bank of India. On 05.06.2002, he entered into an agreement to sell in favour of the plaintiff on receipt of Rs.1,15,000/- out of total sale consideration of Rs.1,29,000/- per acre. It was recited in the agreement that defendant is in the need of the money and he is delivering possession of the land in favour of the plaintiff. The sale deed was agreed to be executed on 23.05.2003.

1.4 As per the case of the plaintiff, the date for execution of the sale deed was extended on two different occasions. Firstly, on 23.05.2003, on payment of additional amount of Rs.35,000/-, the date for execution of the sale deed was further extended to 20.05.2004 i.e. for a period of one year from 23.05.2003. It was again extended to 15.01.2005 on an additional payment of Rs.30,000/-. There are endorsements on the agreement to sell evidencing extension of the date for execution of the sale deed. The plaintiff claims that on 15.01.2005 and 16.01.2005 were holidays and therefore, he attended the office of Registrar on 17.01.2005 and thereafter, sent a notice to the defendant on 11.07.2005 calling upon him to execute the sale deed. Consequently, he filed the suit on 25.07.2005. The defendant while contesting the suit claimed that he has obtained a loan of Rs.1,80,000/- and the document was executed as a surety. The trial Court held that the execution of the agreement to sell is proved, however, it was executed for a collateral purpose to secure repayment of the money. The Court held that at the relevant time, defendant required money to marry his daughter and there is evidence to prove that in the village there is a usual practice of executing the agreement to sell in order to secure repayment of the land. Thus, the Court granted the alternative relief.

1.5 The First Appellate Court dismissed the appeal on the ground that as the agreement to sell evidenced delivery of possession hence, it required mandatory registration. This observation was made by the First Appellate Court on the basis of amendment incorporated in the year 2001 in Section 17 of the Registration Act, 1908.

1.6 On 07.07.2010, the appeal was admitted on the following substantial question of law, which reads as under:-

“i) Whether the agreement Ex.PW4/A can be ignored for want of registration under Section 17(1A) of the Registration Act viz-a-viz the provisions of Specific Relief and Transfer of Property Act?

ii) Whether the oral evidence to vary the terms of written contract could have been considered and relied upon and the same is in-admissible under Sections 91 and 92 of the Evidence Act?

iii) Whether on the facts and in the circumstances of the case the Courts below were right in dismissing the suit of the plaintiff for specific performance of the contract?”

2. Arguments adduced:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the photocopy of the record provided by the learned counsel representing the parties.

2.2 The learned counsel representing the appellant submits that in view of the judgment passed by the Division Bench in **Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others, 2013 (2) RCR (Civil) 419**, wherein, it was held that for the purpose of filing suit for possession by way of specific performance of the agreement to sell, it is not necessary that the agreement to sell must be registered. He submits that the findings of the First Appellate Court on this aspect is erroneous. He further submits that the execution of the agreement to sell is proved and its date of execution has been extended on two different occasions. It is also proved that the possession of the land was delivered and in additional evidence, the plaintiff wants to prove copies of two sale deeds dated 02.12.2011 and 31.01.2012, executed by defendant to the various purchasers. It has been

projected that the defendant has habitually taken this defence and subsequently executes the sale deed.

2.3 On the other hand, the learned counsel representing the respondent submits that one of the marginal witness of the agreement to sell Sh. Niranjana Singh has appeared as DW-1 and proved that the agreement to sell was executed for collateral purpose of securing refund of money. He submits that it is a proved fact that the defendant was in dire need of the money for marriage of his daughter and land was already mortgaged with State Bank of India.

3. Discussion & Analyses:-

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

3.2 Undoubtedly, on the first question, the matter is covered in favour of the appellant by judgment delivered by the Division Bench in **Ram Kishan's, case (supra)**. The learned counsel representing the respondent does not dispute the aforesaid factual position.

3.3 This Bench now proceeds to examine question No.(ii) and (iii). It is evident that original agreement to sell was executed on 05.06.2002. The sale deed was to be executed after a period of more than 11 months, nearly one year from the date of execution of the agreement to sell. Thereafter, it was extended by another period of one year. On the second occasion, it was extended by nearly seven months. At the relevant time, the relief of specific performance of the agreement to sell was discretionary under the unamended Specific Relief Act, 1963, which shall be applicable in the present case. In the agreement to sell itself, it has been recorded that the defendant is in the

dire need of cash amount. Still further, the date for execution of the sale deed was repeatedly extended. Although, the learned counsel representing the plaintiff submits that the date was extended as the defendant was unable to redeem the mortgage from State Bank of India, however, the facts still remains that the defendant was short of finances. Moreover, one of the marginal witness Sh. Niranjana Singh has appeared on behalf of defendant and proved that the defendant required the amount for marriage of his daughter. As far as question No.(ii) is concerned, it may be noted that the Court is entitled to consider all facts and circumstances of the case before coming to conclusion as to whether such agreement was a genuine agreement to sell or was only for securing loan. It is for this reason under the unamended Specific Relief Act, 1963, the relief of specific performance was made discretionary.

3.4 Furthermore, the Appellate Court cannot interfere with the discretion exercised by the trial Court unless it is found to be without any sound basis. As already noticed, the trial Court has given two following reasons for refusing to exercise discretion:-

- i. The defendant required the amount for marriage of his daughter.
- ii. There is a usual practice in the village to execute the agreement to sell in order to secure repayment of the loan amount.

3.5 Additionally, more than 24 years have elapsed from the date of execution of the agreement to sell, however, there is one fact, which requires attention of the Court that the trial Court has not ordered payment of interest,

however, it is the plaintiff, who has remained in possession of the property during all this while. He has been enjoying the fruits thereof.

3.6 The learned counsel representing the appellant further submits that Sh. Niranjana Singh is the relative of defendant and that the plea of document has not been executed for securing of the repayment cannot be taken in view of Section 91 of the Indian Evidence Act, 1872. In the facts of the present case, Section 91 of the Indian Evidence Act, 1872, has no application.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to interfere.

4.2 Dismissed accordingly.

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

March 13th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No