



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

RSA-664-1998 (O&M)

Date of decision : 18.02.2025

Parbhu Ram and others

...Appellants

Vs.

Devinder Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate
Mr. Sonit Simnar, Advocate
Mr. Bhavya Vats, Advocate
Mr. Yashvardhan Goel, Advocate
for the appellants.

Mr. P.S. Guliani, Advocate
Mr. Aminder Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

I. Brief Facts:-

1. The defendants No. 1 to 3 assail the correctness of the First Appellate Court's judgment which in turn has modified the judgment and decree passed by the trial Court. The trial Court found that the plaintiff has proved that defendant No.1 executed an agreement to sell in his favour on 26.07.1989 on receipt of Rs.11,000/- out of total sale consideration of Rs. 17,000/- and the plaintiff was ready and willing to perform his part of the contract also. But the trial Court held that he was entitled to the alternative relief of refund of earnest money alongwith interest.



2. Upon re-appreciation of evidence, the First Appellate Court has found that the alleged agreement to sell executed by defendant No.1 in favour of defendants No. 2 and 3 is antedated and not genuine. Hence, the Court decreed plaintiff's suit for specific performance of the agreement to sell.

3. The defendant No.1 was the owner of 07 kanals 11 marla land, which was mortgaged with possession in favour of defendants No. 2 and 3 for Rs.21,000/-. Subsequently, defendant No. 1 entered into an agreement to sell with the plaintiff on 26.07.1989, wherein, it was recited that the property is already mortgaged with defendants No. 2 and 3. As per the agreement to sell, the sale deed was to be executed and registered on or before 30.06.1990. As agreed, the plaintiff visited the office of the Registrar on 30.06.1990, however, defendant No.1 failed to attend the office of the Registrar. The plaintiff immediately filed the suit on 02.07.1990. In the written statement, the defendant claimed that an agreement to sell earlier was executed by him in favour of defendant No.2 on 07.04.1989 after receipt of Rs.10,000/-. The defendant No. 1 also claimed that he has received an additional amount of Rs. 4,000/- on 29.12.1989 from defendant No.2. He claimed that an agreement to sell dated 26.07.1989, propounded by the plaintiff is forged and fabricated as he was an employee of the plaintiff who had taken an advance of Rs. 5,500/-. The defendant No. 2 and 3 claimed that they have a prior agreement to sell executed by defendant No.1 in their favour on 27.04.1989. As per the agreement to sell, the sale deed was to be executed on 15.10.1990. As already noticed, the trial Court found that the agreement in favour of plaintiff is genuine and he was always ready and willing to perform his part of the



contract, however, refused to grant relief of specific performance.

4. After the trial Court granted the alternative relief, defendant No.1 executed a registered sale deed in favour of defendant No.2 on 30.11.1995. Two appeals were filed, one by the plaintiff and second by defendant No.1 against the trial Court's judgment. The First Appellate Court upon re-appreciation of evidence found that the agreement to sell dated 27.04.1989 by defendant No.1 in favour of defendant No.2 is antedated. The Court examined the original register of the scribe, which is part of the record. It was found that entry of agreement to sell is on the page of more thickness than the other pages of the register. Hence, the Court has found that a page has been subsequently inserted in order to show that the agreement to sell was executed on 27.04.1989.

II Arguments:-

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned counsel representing the appellants contends that the plaintiff has not stepped into the witness box and hence, the Court was required to draw an adverse inference. He further submits that on the agreement to sell dated 26.07.1989, Sh. Satpal son of defendant No.1 has signed which corroborates their defence. He further submits that the plaintiff has failed to prove readiness and willingness because there is no evidence that on 30.06.1990, the plaintiff was possessed of the balance sale consideration alongwith amount of stamp duty.



III Analysis and Discussion:-

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. Though, the plaintiff has not appeared in evidence, however, his father as attorney of the plaintiff has appeared in evidence. He has answered all the questions which were put to him. The plaintiff has led sufficient evidence including the evidence of marginal witnesses and the scribe of the agreement to sell. Hence, adverse inference against the plaintiff cannot be drawn because sufficient evidence has been lacked. This suit is based upon a written contract and oral evidence is not of much significance.

9. With respect to the second contention, it would be noticed that the agreement to sell is scribed on a non-judicial stamp paper of Rs.3/-. It runs into two pages. On the first page Sh. Parbhu Ram has thumb-marked at the bottom. He has also thumb-marked at the time of purchase of the stamp paper and at the second page his thumb-impressions are at three different places. After the recital in the agreement to sell comes to an end, defendant No.1 has thumb-marked it. Thereafter, receipt of Rs. 11,000/- has been executed. The defendant No.1 has thumb-marked the same in a manner that half of the thumb impression is on the agreement to sell, whereas, remaining half is on the revenue stamp. He has also thumb-marked at the bottom of the page. His son Sh. Satpal has also signed as a witness. The defendant No.1 has not examined his son Sh. Satpal in evidence.

10. It is clear from the aforesaid that the signatures of defendant No.1's son would not make the agreement doubtful.



11. The last submission of the learned counsel is with regard to the fact that the plaintiff was not ready and willing to perform his part of the contract. It would be noticed that the plaintiff visited the office of the Registrar on 30.06.1990, the date fixed for execution of the sale deed. He got his affidavit attested claiming that he has brought the balance consideration and is prepared to pay the balance consideration on execution of the sale deed. On 02.07.1990, he filed the suit claiming that he was always ready and willing to perform his part of the contract. Hence, there is no error in the findings of fact of the Courts below that the plaintiff was always ready and willing to perform his part of the contract.

IV Decision :-

12. Hence, no ground to interfere is made out.
13. The appeal is dismissed.
14. All the pending miscellaneous applications, if any, are also disposed of.

18.02.2025	(ANIL KSHETARPAL)	
neeraj	JUDGE	
Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No