



Reserved on: 13.02.2025
Pronounced on: 17.02.2025

1. RSA-949-2013(O&M)

Devi Ram and others **...Appellants**

Vs.

Smt. Brahma Devi and others **...Respondents**

2. RSA-957-2013(O&M)

**Brahma (Deceased) through his
legal representatives and another** ...Appellants

Vs.

Smt. Brahma Devi and others	...Respondents
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CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.K. Sood, Advocate
for the appellants in RSA-949-2013.

Mr. M.S. Uppal, Advocate and
Mr. Arun Kumar Sharma, Advocate
for the appellants in RSA-957-2013.

Mr. Bhisham Kumar, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

1. **Brief facts of the case:-**

1.1 With the consent of learned counsel representing the parties, two connected regular second appeals arising from a common suit shall stand disposed of by this judgment.



1.2 These two separate regular second appeals have been filed, one by defendants No.1 and 2 and second by defendants No.3 and 4.

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

1.4 It is the case of the plaintiff that Sh. Devi Ram and his son Sh. Dharam Pal executed an agreement to sell on 23.06.2000 in his favour with respect to the land measuring 02 kanals 6 marlas on receiving Rs.70,000/- out of total sale consideration of Rs.80,000/-. The balance amount of Rs. 10,000/- was to be paid on or before 23.06.2001 at the time of execution and registration of the sale deed. The suit was filed on 26.04.2004. While filing the suit, the plaintiff claims that the time was not the essence of the contract and the plaintiff was always ready and willing to perform his part of the contract. He got his presence marked before the Sub Registrar, Ballabgarh on 25.06.2001 and he served notice upon the defendants on 07.08.2001. It was also asserted that defendant No.1 had executed a registered lease deed of land measuring 01 kanal and 02 marlas in favour of defendant No.3 on 15.07.2002, whereas, defendant No.2 sold the ownership rights with respect to 01 kanal 02 marlas land in favour of defendant No.4 on 17.07.2002. Thereafter, the plaintiff has been repeatedly requesting the defendants to honour the agreement. The defendants contested the suit while denying execution of the agreement to sell. It was claimed that defendant No.1 was in physical possession of the property as lessee for a period of 99 years out of which 01 kanal 02 marlas has been transferred to defendant No.3 by a registered lease/sale deed dated 15.07.2002,



whereas, defendant No.2 has sold some land to defendant No.4 by a registered sale deed dated 17.07.2002. After culling out the issues, the parties were permitted to lead evidence and the trial Court dismissed the suit on the ground that the plaintiff failed to prove the agreement to sell. The plaintiff filed an appeal.

1.5 During the pendency of the appeal, the First Appellate Court sent the agreement to sell to the Forensic Science Laboratory for giving opinion about the genuineness of signatures of defendant No.1. The Forensic Science Laboratory informed the Court that on the basis of information supplied, there are certain dis-similarities in the signatures of Sh. Devi Ram with his admitted signatures. Hence, it was opined that at this stage, it is not possible to conclude that both the signatures belongs to one and same person.

1.6 The First Appellate Court proceeded to take upon herself the job of comparing the signatures and thereafter, allowed the appeal on the ground that the agreement to sell is proved.

2. Arguments addressed:-

2.1 Learned counsel representing the appellants contends that the First Appellate Court has erred in accepting the appeal as the agreement to sell was not proved. It is submitted that marginal witness PW2-Hari Krishan did not appear for cross-examination. The second marginal witness is plaintiff's husband, whereas, Sh. Vijay Pal is her nephew. It is further contended that there is no explanation for delay of 34 months in filing the suit. Hence, the Court should not have granted discretionary relief to the plaintiff. They further



contended that defendants No. 3 and 4 are *bona fide* purchasers and it is not claimed by the plaintiff that he did not come to know of the registered deeds executed on 5/17.07.2002 in favour of defendants No. 3 and 4. Still, the plaintiff filed the suit after nearly 21 months.

2.2 *Per contra*, learned counsel representing the respondents submits that the suit was filed within the period of limitation and the plaintiff has proved the agreement to sell. He submits that the plaintiff was always ready and willing to perform his part of the contract.

3. Discussion & Analysis:-

3.1 The arguments of learned counsel representing the parties have been analyzed, evaluated and considered alongwith the judgments of the Courts below and Lower Court Record.

3.2 Firstly, the First Appellate Court has overlooked very important statements of PW3-Sh. Vijay Pal and PW5- Sh. Rampal, who are nephew and husband of Smt. Brahma Devi. From their evidence, it become evident that the plaintiff's son and husband's nephew were involved in a criminal case arising out of allegation of rape of Sh. Dharam Pal's wife. This fact is so stated in categoric terms by Sh. Vijay Pal and Ram Pal during her cross-examination. A copy of this agreement to sell was produced in the aforesaid criminal case being tried under Section 376 of the Indian Penal Code, 1860.

3.3 The First Appellate Court has also overlooked the affidavit of Sh. Vijay Pal, nephew of the plaintiff, to the effect that the agreement to sell was never intended to be implemented and this document was signed only to



help plaintiff's son to get bail. During cross-examination when the affidavit was put to PW3-Sh. Vijay Pal admitted its execution. This affidavit got attested on 11.09.2001 from Executive Magistrate. Thus, the finding of the trial Court that the plaintiff failed to prove the genuineness of the agreement was not erroneous.

3.4 The First Appellate Court also overlooked that the alleged agreement to sell was executed on 23.06.2000. As per recital in the agreement, the sale deed was to be executed on 23.06.2001, i.e. after a period of 12 months. The plaintiff filed the suit on 26.04.2004. There is no explanation for delay either in the plaint or in his evidence.

3.5 The First Appellate Court has also overlooked the fact that defendants No. 3 and 4 have purchased the property before institution of the suit. The plaintiff has led no evidence to prove that they had knowledge of the agreement to sell. In fact, defendant No.4-Sh. Bhagwan Singh has stated that he has no knowledge of the agreement to sell.

3.6 There is a discrepancy in the statements of Smt. Brahma Devi and her husband Sh. Rampal with respect to the place where the agreement was drafted and signed. On the one hand, Smt. Brahma Devi stated that the agreement to sell was drafted and signed at her residence in the village, whereas, her husband stated that the agreement was drafted and signed at the Rest House where Tehsil office exists.

3.7 As per Ex.P1, the agreement to sell, the same was drafted by Sh. S.G. Vashisht, Advocate on 23.06.2000. He has affixed his seal with



signatures. However, Ex. D1 is the copy of the same agreement but the seal and signatures of Sh. S.G. Vashisht do not exist.

3.8 One of the attesting witness, namely, Sh. Hari Kishan, Nambadar initially appeared on evidence on behalf of plaintiff. However, he did not come for cross-examination. Subsequently, Sh. Hari Kishan, Nambadar appeared as DW-1. He stated that no payment was made in his presence. He stated that the parties did not sign in his presence. He never visited the Tehsil Office.

3.9 Moreover, the deposition of Smt. Brahma Devi does not inspire confidence. She claims that the agreement to sell was got registered. Though, it is actually not registered. She also claims that the possession of the land was handed over to them at the time of agreement to sell. There is no recital in the agreement to sell to this effect.

3.10 Moreover, the agreement to sell is not drafted on a non judicial stamp paper. It has been drafted on a plain paper with special adhesive stamps of Rs. 3/-. The wife of Sh. Dharma Pal and daughter-in-law of Sh. Devi Ram had filed a complaint with the police alleging rape against the plaintiff's son and nephew. As per Ex. P2, the affidavit of Sh. Vijay Pal, these documents were signed in order to get bail in the criminal case. He has also stated that agreement to sell was not executed in his presence. He specifically stated that neither he went to the Tehsil on 23.06.2006 nor Sh. Devi Ram etc were present in Ballabgarh Tehsil.



4. **Decision:-**

4.1 Keeping in view the aforesaid discussions, the First Appellate Court's judgment is set aside and that of the trial Court is restored.

4.2 Accordingly, both the appeals are allowed.

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

(ANIL KSHETARPAL)
JUDGE

17.02.2025

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No