



201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4035-2018 (O&M)
Reserved on: 20.01.2025
Pronounced on: 10.03.2025

Harbans Singh (deceased) through his LRs ...Appellant

Vs.

Balwinder Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate
for the appellant(s).

Mr. Ramesh Chand Sharma, Advocate
for the respondent.

ANIL KSHETARPAL, J.

1. **Brief facts:-**

1.1 The plaintiff assails the correctness of the First Appellate Court's judgment which in turn has reversed the judgment of the trial Court.

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

1.3 Sh. Balwinder Singh owner of 6 kanals 5 marlas land is alleged to have entered into an agreement to sell on 19.11.2008 in favour of the plaintiff-late Sh. Harbans Singh on receipt of Rs. 7,00,000/- out of sale consideration of Rs.8,50,000/-. As per the agreement, the sale deed was to be executed on 25.04.2009. However, the defendant failed to honour the agreement. April 25th,



26th and 27th of 2009 were holidays, hence, the plaintiff visited the office of the Registrar alongwith balance sale consideration on 24.04.2009 and on 28.04.2009 but the defendant did not come. The plaintiff got his affidavit attested from the Executive Magistrate on 28.04.2009. Thereafter, on 30.04.2009, he sent a notice to the defendant but no reply was received. The defendant was called upon to come on 19.05.2009, when the plaintiff remained present in the office of the Registrar but the defendant did not come. The suit was filed on 22.07.2009. The defendant while contesting the suit claimed that he had borrowed loan from Sh. Mohinder Singh s/o Sh. Tara Singh, which has been returned. At that time, his thumb-impresions on blank stamp-papers were taken, which have been misused. The agreement to sell has been forged and fabricated by the plaintiff. The trial Court decreed the suit, however, the First Appellate Court has refused to grant specific performance of agreement to sell as it noticed following inconsistencies in the document:-

- I. First of all, the agreement to sell was presented before the Sub Registrar for registration as mortgaged deed with possession and not as an agreement to sell.
- II. As per endorsement of the Sub Registrar, it was read over and explained to the defendant as a special power of attorney and not as an agreement to sell.
- III. As per the case of the plaintiff and defendant, an amount of Rs. 7,00,000/- was paid by the plaintiff to the defendant, however, the endorsement on the



agreement to sell proves that there was no payment made on that day.

IV. Moreover, the plaintiff, namely, Sh. Harbans Singh died. One of the witnesses of the agreement to sell, Sh. Sukhjinder Singh filed an application for bringing him on record as legal representative on the basis of a registered Will dated 06.03.2017, to the exclusion of the natural legal heirs.

1.4 Thus, the First Appellate Court has found that these factors create a doubt on the genuineness of the agreement to sell.

2. **Arguments put forth by learned counsel representing the parties:-**

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

2.2 Learned counsel representing the appellant has submitted that the agreement to sell has been scribed on a stamp paper and the plaintiff has examined the Scribe as well as witness to the agreement to sell. He submits that the agreement to sell is registered and hence, the First Appellate Court has committed an error in interfering with the judgment of the trial Court.

2.3 *Per contra*, learned counsel representing the respondent has highlighted that the agreement to sell has been scribed on the stamp-papers, which was purchased for execution of the mortgaged deed.



3. **Analysis and Discussion:-**

3.1 The appellant's counsel has failed to furnish any satisfactory explanation about the above noted reasons recorded by the First Appellate Court. There is another strange feature in the present case i.e. Rs.7,00,000/- was paid as earnest money out of total sale consideration of Rs.8,50,000/, however, there is no recital with regard to delivery of possession. The reasons recorded by the First Appellate Court are plausible.

4. **Discussion:-**

4.1 Hence, no ground is made out to interfere with the judgment of the First Appellate Court.

4.2 The appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

10.03.2025

neeraj

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No