

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

RSA No. 2848 of 1985. [O&M]
Date of Decision: 18th February, 2015.

Kirpa Singh @ Kirpal Singh Appellant through
Mr. Harsh Bhunger, Advocate
Versus

Naranjan Singh & Anr. Respondents through
Mr. Ish Preet Singh, Advocate.

CORAM:HON'BLE MR. JUSTICE SURYA KANT

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

Dismissal of the suit for Specific Performance based on the agreement to sell dated 02.03.1981 in respect of agricultural land measuring 6 kanals 12 marlas and 4 marlas, by the trial Court as well as the first Appellate Court, has given rise to this Regular Second Appeal.

[2]. The appellant – plaintiff and respondent-defendant No. 1 are brothers. The appellant filed the above stated suit on the plea that his brother, namely, defendant No. 1 agreed to sell the land measuring 6 kanals 12 marlas situated in village Ibban and 4 marlas situated in village Dhapai, District Kapurthala, Punjab for a sale consideration of ₹30000/- per acre. He averred that at the time of agreement, earnest money of ₹6000/- was paid and it was stipulated that the sale deed shall be got executed within one year. The appellant further averred that he had always been ready and willing to perform his part of the contract but respondent No.1, with a view to

wriggle out of the said agreement, entered into another sale agreement with respondent No. 2 on 01.06.1981 and thereafter refused to execute the sale deed in favour of appellant.

[3]. The first respondent contested the suit denying the execution of any agreement to sell on 02.03.1981. The receipt of earnest money of ₹6000/- was also denied. The first respondent maintained that the agreement to sell might have been a fabricated document. He, however, admitted the agreement to sell with respondent No. 2.

[4]. Following issues were framed by the trial Court:-

- “[1] Whether the defendant executed an agreement dated 02.03.1981 in favour of the plaintiff to sell the land in suit and received ₹6000/- as earnest money?*
- [2] Whether the plaintiff has been ready and willing to perform his part of the contract at all material times, if issue No. 1 is proved?*
- [3] Whether the defendant has resiled to perform his part of the contract as alleged?*
- [3A] Whether defendant No. 1 executed an agreement to sell the land in dispute to defendant No. 2 on 1.6.1981, if so its effect?*
- [4]. Relief”.*

[5]. On consideration of the evidence led by the parties, both the Courts have concurrently held that [i] the alleged agreement to sell [Ex.P2] is shrouded by suspicious circumstances and appears to have been fabricated; [ii] payment of ₹6000/- as earnest money was not proved as the said amount was deposited in the account of respondent No. 1 out of the sale consideration received by his mother on sale of property; and [iii] there was another agreement to sell executed between the parties on the same day in the Court

complex which was subscribed by a Deed Writer, therefore, it was un-likely for the parties to enter into one more agreement to sell at home.

[6]. The Courts below have further held that respondent No. 1 indeed had executed an agreement to sell in favour of respondent No. 2 on 01.06.1981.

[7]. I have heard learned counsel for the parties and gone through the record.

[8]. Learned counsel for the appellant though vehemently urges that once the agreement to sell [Ex.P2] has been proved to have been signed by respondent No. 1, the Courts below ought to have inferred that it was lawfully executed. He further urges that Issue No. 3-A has been decided on the bald and self-serving statement of the respondent which was meant to defeat the claim of appellant. These perverse findings, according to learned counsel, give rise to a substantial question of law.

[9]. Having given my thoughtful consideration to the submissions, I do not find any merit in this appeal. The question whether the agreement to sell is a genuine document or is shrouded by suspicious circumstances, is essentially a question of fact which has been concurrently answered by the Courts below. Otherwise also, the fact that on that very day another instrument was executed between the parties in the Court Complex creates a strong doubt on the unusual course opted for execution of the alleged agreement to sell at home. In the face of any proof worth of reliance to show the payment of earnest money, more so when the parties took no further

step or changed their respective position in furtherance of the alleged agreement, the Courts below have rightly disbelieved the case set up by the appellant. Similarly, the finding on Issue No. 3A is independent of Issues No. 1 and 2. Had the appellant proved his case against Issues No. 1 to 3, finding on Issue No. 3-A would have been otherwise inconsequential.

[10]. For the reasons afore-mentioned, this appeal is devoid of any merit and is dismissed, leaving, however, the parties to bear their own costs.

[11]. Dasti.

February 18, 2015.
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(SURYA KANT)
JUDGE