

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

**RSA No.2298 of 2006 (O&M)
Date of decision : 21.10.2015**

Gulab Singh

...Appellant

Versus

Meena Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chouhan S.S. Sisodia, Advocate
for the appellant.

Mr. Rishav Jain, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has filed Regular Second Appeal against the concurrent findings, whereby the suit for possession by way of specific performance of the agreement to sell dated 07.06.2001 has been dismissed.

Mr. Chouhan S.S. Sisodia, Advocate, appearing on behalf of the appellant-plaintiff submits that both the Courts below have committed illegality and perversity while dismissing the suit despite the fact that the execution of the agreement to sell has been proved through testimony of one attesting witness Gurmukh Singh and scribe Harjinder Singh. The total sale consideration in respect of the land measuring 1 biswa, 2-1/2 biswas agreed was ₹ 1 lac and the earnest money of ₹ 87,000/- was paid. The stipulated date for registration and execution of the agreement to sell was 08.08.2001.

The appellant-plaintiff appeared before the office of Sub-Registrar, but the respondent-defendant did not appear which resulted in filing a suit on 12.10.2001. Thus, there was no delay on his part. The readiness and willingness has been proved throughout from the date of the execution of the agreement to sell and the date of filing of the suit and during the pendency of the suit.

Both the Courts below have erroneously misdirected in forming the opinion that the agreement to sell was not a genuine document as the signatures of the respondent-defendant were on a blank stamp paper and which has been converted into an agreement to sell and prays that the following substantial questions of law arises for determination by this Court:

- i. Whether both the Courts below have completely misread the evidence of the appellant and appreciated the oral evidence of the respondent?
- ii. Whether the appellant has been able to fully prove the execution of the agreement to sell dated 07.06.2001?
- iii. Whether the learned Courts below have formed wrong opinion regarding the indifference in the lining of the agreement?

Mr. Rishav Jain, Advocate, appearing on behalf of the respondent-defendant submits that the appellant-plaintiff has failed to prove the consideration much less its source.

The Court should be circumspect in interfering with concurrent finding, while exercising the power under Section 100 of the Code of Civil Procedure.

The Courts below have rightly formed the opinion that there was a spacing while drafting an agreement which shows that the blank-signed stamp papers were converted into agreement to sell and this fact was pleaded in the written statement. In fact, the signatures were obtained on the pretext for taking the loan as one Hari Chand was known to the husband of respondent-defendant.

He further submits that as per clause of the agreement, possession of suit land was handed over, though the suit has been filed for possession, therefore, the agreement to sell has rightly been discarded by the Courts below much less, no substantial question of law arises for adjudication.

I have heard the learned counsel for the parties and appraised the paper-book and seen the record of Courts below.

The essential requirement for seeking a discretionary relief under Section 20 of the Specific Relief Act, 1963 (for short – '1963 Act') is not only to specifically plead readiness and willingness as per Section 16 (c) of 1963 Act but prove the same. One of the attesting witnesses and scribe had been consistent and coherent in the examination-in-chief and withstood the cross-examination.

This Court had an occasion to examine the original agreement to sell and I am of the opinion that there is no gap or reduction in the spaces for the purpose of adjusting the terms and

conditions of the agreement to sell. On going through the entire agreement, it appears to have been written in one go, does not appear to have been written with special care to adjust the blank-signed papers, even the fourth page, the signature of the Vendor is at the top of the judicial stamp papers. The agreement to sell had been purchased through one Rajinder Singh Stamp paper and the register has also been proved. It is strange a person who has appended the signatures on the register of stamp paper as well as on the other stamp paper comes out with a plea, when confronted, to say that the signatures were obtained for the purpose of obtaining loan. Had it been so, the respondent-defendant would have on receipt of the summons of the suit initiated criminal proceedings by filing a complaint or otherwise. It is a settled law that the person should not show the ready amount at the time of execution and registration of the sale deed. There is no evidence which has come forthwith that the possession was actually handed over.

In my view, both the Courts below have committed illegality and perversity in misreading the agreement to sell, such finding give rise to a substantial question of law which is arisen for determination of this Court. In other words, it is now a settled law that once there is misreading of the documentary evidence, the Court can always interfere in the regular second appeal.

It is a matter of record that the vendor is an literate lady. The story coined in the written statement, does not sound a logic for the reason that in case the vendor had appended her signatures

on a blank stamp paper, it has not been explained how the plaintiff-vendee managed to ascertain the details of the land.

The substantial question of law, noticed above, is thus hereby answered in favour of appellant-plaintiff and against respondent-defendant.

Consequently, the impugned judgment and the decree of the Courts below are set aside. The suit of the appellant-plaintiff is hereby decreed.

Decree sheet be prepared, accordingly.

RSA is allowed.

21.10.2015
yogesh

(AMIT RAWAL)
JUDGE