

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

RSA No.4987 of 2010(O&M)

Date of Decision: 06.08.2015

Sarup Singh

... Appellant

Versus

Surinder Kaur & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Arora, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The appellant-defendant 1 has filed the present regular second appeal against the concurrent findings of fact recorded by both the Courts below in a suit for possession by way of specific performance of the sale agreement executed on 26.7.2004 of a residential house for sale price of Rs.1.5 lacs.

2. Buta Singh was the husband and attorney of Smt. Surinder Kaur and on the basis of authority given to him to inter alia alienate the suit property, he entered into the sale agreement with Sarup Singh- the present appellant. Execution of the sale agreement was duly proved in the trial. When the vendor pleaded fraud then a handwriting and fingerprints expert ought to have been produced in evidence to render an opinion on the genuineness or otherwise of the signatures of the intending seller on the contract of sale.

3. The defence of the suit was that Buta Singh was dead drunk when he signed the sale agreement with intending purchaser Sarup Singh.

This fact could not be proved by leading oral evidence of any witness. Therefore, nothing can be said on the question of fraud.

4. The other point raised by learned counsel for the appellant is that when the sale agreement was executed, a mortgage deed was also executed with respect to the suit property on the same day with the defendant-bank and this appears to be a suspicious circumstance against the sale agreement. The Courts below have expressed the view that the two are separate transactions and one cannot affect the other as the agreement to sell stands independent of the mortgage deed and is an enforceable contract which can be specifically enforced in a court of law. I find no reason to differ with the view expressed in the findings recorded by the Courts below.

5. The last argument of Mr. Arora is that the property in dispute is the sole residential house of the appellant and in case the decree is executed undue hardship would result as he would be divested of his house. It would have been possible to view this statement only if a case of hardship was pleaded in the written statement and proved as an exception to rule of specific performance under Section 20(2) (b) of the Specific Relief Act, 1963. If such a defence is not pleaded and proved, it may not be possible for this Court to enter upon the issue in second appeal and relieve the defendant.

6. Moreover, the plea of fraud and plea of undue hardship cannot be seen to co-exist as the pleas are by nature self destructive. Hardship can be pleaded only in cases where due execution of contract is honestly admitted by defendant and the circumstances properly explained in pleadings which had led to the execution of the contract and are adduced in

evidence satisfactorily on record showing the agreement to sell property was not the real intention of the defendant and at the same time it would be wholly inequitable to grant a decree of specific performance.

7. Therefore, I find no valid reason to interfere in this matter on the second appeal side of this Court. The appeal is, accordingly, dismissed as not presenting any substantial question of law for consideration.

06.08.2015
monika

(RAJIV NARAIN RAINA)
JUDGE