

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

RSA No. 1587 of 2011 (O&M)
Date of decision : 1.9.2015

N. D. Rahi and others

... Appellants

versus

Chanan Kaur

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ghulam Nabi Malik, Advocate, for the appellants.

Rajesh Bindal, J.

The LR's of plaintiff have challenged the judgment and decree of the learned Lower Appellate Court whereby that of the trial court was reversed and the suit for permanent injunction filed by the plaintiff, was dismissed.

In the case in hand, the plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 6.10.1990, with the plea that the defendant/respondent agreed to sell the suit property to the plaintiff for a total sale consideration of ₹ 1,30,000/-. She paid ₹ 35,000/- as earnest money. Last date fixed for execution of sale-deed was 6.10.1993. On 22.3.1991 and 8.5.1991 she paid ₹ 6,000/- and ₹ 9,000/-, respectively to the defendant. In the month of July, 1991, as the defendant wanted to alienate the suit land, she got issued a legal notice dated 19.7.1991 calling upon the defendant to execute the sale-deed on 8.8.1991, however, she did not turn up on the date fixed to perform her part of the contract. Thereafter, the plaintiff filed the suit claiming specific performance of agreement to sell. The suit was decreed by the trial court directing the defendant to execute the sale-deed within four months after receipt of balance sale consideration. However, the first appeal filed by the defendant was allowed by the learned Lower Appellate Court, which resulted in filing the present second appeal.

The main issue in the present appeal is as to whether the agreement to sell was a genuine document or not. The learned lower Appellate Court while recording findings on this issue has rightly concluded

that the agreement to sell was never executed. The agreement was allegedly executed on 6.10.1990, whereas the stamp paper, which was used for scribing the same was purchased on 3.8.1990 and on that day defendant Chanan Kaur was not the owner of the property in question. Further the sole independent witness Amarjit PW3 stated that agreement dated 6.10.1990 was regarding sale of plot, whereas the agreement reveals that Chanan Kaur agreed to sell her house. The attesting witnesses to the agreement admitted that the same was not scribed in their presence at the instance of Chanan Kaur. Thumb impression of defendant Chanan Kaur was already existing at the agreement to sell and it was scribed later on. The plaintiff did not appear in the witness box to prove the execution of agreement to sell, rather her husband appeared, who could not tell exactly about the execution of the same. He nowhere stated about the execution of the agreement in his presence or in the presence of his wife.

The learned Lower Appellate Court has also rightly held that thumb impression of Chanan Kaur was already existing on the agreement to sell before it was scribed. Two thumb impressions upon the revenue stamps of Chanan Kaur were already existing which shows that these were obtained for advancing loan to Madan Lal and as security Chanan Kaur thumb marked. The document was prepared for advancing loan and not as an agreement to sell.

Nothing has been pointed by learned counsel for the appellants, which has been overlooked by the learned Lower Appellate Court, in reaching the conclusion.

For the aforesaid reasons, in my opinion, there is no illegality committed by the learned Lower Appellate Court in dismissing the suit filed by the plaintiff. The findings recorded by the learned Lower Appellate Court are not perverse. No substantial question of law arises. The appeal is accordingly dismissed. Consequently, the accompanying applications are also dismissed.

1.9.2015
vs

(Rajesh Bindal)
Judge