

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

R.S.A.No.1686 of 2011 (O&M)

Date of Decision: September 29, 2015

Darshan Singh

...Appellant

Versus

Sajjan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.D.P.Singh, Advocate,
for the appellant.

Mr.Animesh Sharma, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant has challenged the impugned judgments and decrees of both the Courts below, whereby the suit for specific performance of the agreement to sell dated 3.5.2002 in respect of land measuring 26 kanals 4 marlas, situated at Village Kakrala, has been decreed.

Mr.D.P.Singh, learned counsel appearing on behalf of the appellant-defendant submits that the agreement to sell was specifically denied by the defendant and it was stated that there was a loan transaction as Amar Nath son of Shadi Ram was a Commission Agent of the appellant-defendant. On 3.5.2002, a sum of ₹4,50,000/- was taken from the Commission Agent and an agreement was executed. On return of the

aforementioned amount on 12.12.2002 along with interest, nothing remained due. On 3.5.2002, only Gajjan Singh and Major Singh were present when Commission Agent Amar Singh paid a sum of ₹4,50,000/- to the appellant-defendant. There was no need of borrowing a sum of ₹7,50,000/- more on 3.5.2002 because he had taken a sum of ₹4,50,000/- from Amar Nath as security of loan amount. The respondent-plaintiff, in connivance with the witnesses, procured the thumb impression of the appellant-defendant on different papers. The aforementioned facts have not been noticed by the Courts below, which has resulted into miscarriage of justice, much less, illegality and perversity, therefore, the appeal involves substantial questions of law to be determined by this Court.

Mr.Animesh Sharma, learned counsel appearing on behalf of the respondent-plaintiff submits that PW-4 Parkash Kumar Deed Writer clearly deposed that he had scribed the agreement at the instance of the defendant in favour of the plaintiff. The contents of the agreement were read over and explained to the defendant and after understanding its correctness, he appended his thumb impression. The entry in respect of the agreement was also entered at Sr.Nos.73 and 74 in the register maintained by the Deed Writer. The Courts below found that the respondent-plaintiff was ready and willing to perform his part of the agreement inasmuch as that the suit was filed on 12.5.2003.

I have heard the learned counsel for the parties and appraised the paper book.

The agreement to sell has been proved through the testimony of both the attesting witnesses, namely Major Singh and Jang Singh. The

receipt of the earnest money has also been proved. Their testimony is corroborated with the statement of Parkash Kumar Deed Writer, as noticed above. The stamp papers had also been proved to be purchased by the appellant-defendant, which were for the purpose of execution of the agreement to sell, through the testimony of PW-6 Ranjit Singh Stamp Vendor.

The respondent-plaintiff remained present in the office of the Sub Registrar with the balance sale consideration on the target date, but the appellant-defendant did not turn up for execution and registration of the sale deed. In this context, affidavit Ex.PW5/B was got attested from the Notary Public, which has been proved through the testimony of PW-7 Smt.Gurinder Kaur Notary Public. The aforementioned evidence is essential requirement of exercising the discretion under Section 20 of the Specific Relief Act.

Noticing the aforementioned facts, both the Courts below, in my view, have not committed any illegality and perversity in decreeing the suit and dismissing the appeal filed by the appellant-defendant as no direct and cogent evidence has been led by the defendant in support of his averments.

Assuming for the sake of arguments that the blank signed/ thumb marked stamp papers have been used to convert the same into agreement to sell, the defendant has not made any effort to lodge any complaint or DDR with the police. The aforementioned facts would reveal that the intention of the appellant-defendant turned dishonest as over a period of time, prices of the property normally increase.

I do not find any illegality and perversity in the findings

rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court.

In view of what has been observed above, the judgments and decrees of both the Courts below are upheld. The present appeal is devoid of merit and the same accordingly is dismissed.

September 29, 2015
ramesh

(AMIT RAWAL)
JUDGE