

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

RSA No.3377 of 2011 (O&M)

Date of decision : 10.12.2015

Siri Ram

...Appellant

Versus

Bal Kishan

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. J.P. Sharma, Advocate for the appellant.

Mr. Tejinder Joshi, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby agreement to sell dated 25.05.2004 has been held to be proved and suit decreed for specific performance of the same, the appellant-defendant has been directed to perform his part of the agreement on receipt of the balance sale consideration.

Mr. J.P. Sharma, learned counsel appearing on behalf of appellant-defendant submits, that agreement to sell ex facie proves that the thumb impression of the appellant-defendant was obtained on the blank papers and on receipt of legal notice preceding to the filing of the suit, complaint under Section 420 IPC was also filed against the respondent-plaintiff. The agreement to sell does not mention about the separate receipt of ₹3,00,000/- being earnest money against the total sale consideration of

₹7,78,125/-. The execution of the agreement to sell was specifically denied. The defendant at the time of agreement to sell was 88 years old and, therefore, fraud has been played upon the defendant. He further submits that as per the statement of DW2 Dr. Yogesh Sharma, it has been found that defendant was having 75% visual disability.

Mr. Joshi, learned counsel appearing on behalf of respondent-plaintiff submits, that agreement to sell has been proved through the testimony of PW6 Ramu Kashyap, Stamp Vendor, who had also deposed that purchase of stamp paper has been entered in his register at Sr. No.2510, page No.100. PW5 Ram Ditta, WBN from the office of Naib Tehsildar, Nigdhu has also been examined to prove the presence marked in the office of Sub-Registrar, in essence, agreement to sell has been proved through the testimony of other attesting witnesses also. The plaintiff had been found to be ready and willing as the target date for execution of the sale deed was 24.05.2005, whereas suit was filed on 23.07.2005. Both the Courts below have concurrently rendered findings against the appellant-defendant which cannot be interfered, until and unless substantial questions of law involved which does not arise for determination.

In rebuttal Mr. Sharma, has cited following case law to submit that where the agreement to sell has been executed by old and rustic villagers, alleged execution of agreement shall have to be examined with extra care, caution and all suspicions:-

i) *Sujan Kaur Vs. Chand Singh, 2003(3) RCR (Civil) 660.*

And judgment of Hon'ble Supreme Court in *Bal Krishna and another Vs. Bhagwan Das (dead) and ors. 2008(2) RCR (Civil) 732* to say

that bald statement of the vendee is not to be seen but his conduct has to be seen and *Smt. Babulli (deceased) through LRs Vs. Smt. Hamidul Bibi (deceased) and ors., 2010(7) RCR (Civil) 1089*, whereby property described in the plaint different from property agreed to be sold by seeking discretionary relief under Section 20 of the Specific Relief Act.

I have heard learned counsel for the parties and appraised the paper book and as well as case law cited at bar.

The agreement to sell has been proved through the testimony of the attesting witnesses as Ajay Pal Chauhan Advocate who has appeared in the witness box and deposed that he attested the agreement to sell and made entry at Sr. No.681 on 25.05.2004 in his register. To the specific question put in cross-examination he answered that entry is in his hand. Even PW5, concerned officer from the office of Registrar appeared and stated that respondent-plaintiff had marked his presence for the purpose of registration and execution of the sale deed on 24.05.2005. The stamp vendor as noticed above has also been examined. Even in the criminal complaint, the respondent-plaintiff have been acquitted vide judgment dated 22.02.2008. Certified copy of which has to be handed over during the course of hearing. Appeal is stated to be pending. In suit for specific performance of agreement, readiness and willingness has to be seen from the date of execution of the sale agreement till the currency of it, much less, during the pendency of the suit till passing of the decree.

The target date and stipulated date for registration and execution of the sale deed was 24.05.2005. Preceding to the filing of the suit, legal notice dated 31.05.2005 was also served upon appellant-

defendant and suit was filed on 23.07.2005. The statement of DW2 reveals that appellant-defendant suffering from 75% disability empairment would not be a sufficient evidence to belie the contents of the agreement inasmuch as that respondent-plaintiff has been acquitted in the criminal complaint. Nothing prevented the appellant to come out with such plea by replying to the legal notice. Remaining silent on the receipt of the legal notice proved that entire story has been coined for the first time on the receipt of the notice of the suit.

I have examined original agreement to sell and of the opinion that it bears thumb impression of the appellant. It is stamp vendor who has deposed in favour of respondent-plaintiff. All the witness of the plaintiff have been deposed on the same line as has been averred in the suit. The appellant-defendant has not been able to ascertain anything contrary in the cross-examination.

There is no dispute with regard to the procedure and the law culled out in the judgment cited. Each and every case has to been seen by arriving at a finding. However as already noticed above the agreement has duly been proved. Even if the appellant had been rustic villager and is of age of 80 years, would be meaningless.

Keeping in view the aforementioned fact, I do not intend to differ with the findings rendered by the both the Courts below, much less, no substantial question of law arises for determination.

Appeal is accordingly dismissed.

10.12.2015

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**(AMIT RAWAL)
JUDGE**