

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.4222 of 2012 (O&M)

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Date of decision:8.5.2015

Randhir Singh and another

.....Appellants

v.

Gurdev Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Chetan Mittal, Senior Advocate with Mr. Mayank Mathur,
Advocate for the appellants.

Mr. Akshay Bhan, Senior Advocate with Mr. Anurag Aggarwal,
Advocate for the respondents.

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Inderjit Singh, J.

This regular second appeal has been filed by Randhir Singh and Kesar Singh-appellants/defendants against Gurdev Singh and Gurdarshan Singh-respondents/plaintiffs challenging the judgment and decree dated 11.11.2011 passed by the learned Additional Civil Judge (Senior Division), Samana, vide which the suit of the plaintiffs has been decreed and the judgment and decree dated 21.3.2012 passed by the Additional District Judge, Patiala, vide which the appeal filed by the defendants against the judgment and decree of the learned Additional Civil Judge (Senior Division), Samana, has been dismissed.

The brief facts of the case are that Gurdev Singh and

Gurdarshan Singh-plaintiffs filed suit against Randhir Singh and Kesar Singh for possession by way of specific performance of agreement to sell dated 14.7.2005 executed by both the defendants in favour of the plaintiffs regarding the land measuring 51 Kanals 14 Marlas fully described in the head note of the plaint and for permanent injunction restraining the defendants from alienating the suit land etc.

It is stated in the plaint that the defendants agreed to sell the suit land vide agreement to sell dated 14.7.2005 along with electric motor etc. for consideration of ₹6,95,000/- per Killa to the plaintiffs and received ₹8 Lacs as earnest money. Defendant No.1 Randhir Singh signed the agreement and defendant No.2 Kesar Singh thumb marked the same in the presence of attesting witnesses Gurmail Singh and Amrik Singh. The date for execution of the sale deed was fixed as 28.11.2005. The plaintiffs went to the office of the Sub Registrar on the stipulated date along with the requisite balance sale consideration etc. and filed application and joint affidavit with the Sub Registrar for getting their presence marked, but the defendants did not turn up. It is also stated that the plaintiffs remained ready and willing and are still ready and willing to perform their part of the contract. It is also the case of the plaintiffs that on receiving copy of the Jamabandi, they came to know that the defendants are not the owners of the entire area of 3 Kanals of their number. The plaintiffs also came to know that Kesar Singh-defendant has already created charge/encumbrance on 16 Kanals 8 Marlas of land of his half share out of the land measuring 32 Kanals 16 Marlas. It is also stated that the legal notice was also given, but

to no effect.

On the other hand, the case of the defendants in the written statement is mainly that no agreement to sell was ever executed by the defendants on 14.7.2005 in favour of the plaintiffs. The agreement to sell, if any, is result of fraud and falsely prepared document on the part of the plaintiffs in connivance with alleged witnesses with some other persons without consideration and is not a genuine document to be acted upon. Sale of electric motor etc. is also denied. Receipt of earnest money of ₹8 Lacs was also denied. It was pleaded that none of the defendants signed or thumb marked the alleged document. The defendants wanted to purchase some land in Samana area and Kapoor Chand and some other persons of a group dealing in business of property dealership and they obtained signatures/thumb impressions on some blank papers stating that the said papers are to be used as authority to purchase land on the part of the defendants.

The learned Additional Civil Judge (Senior Division), Samana, vide judgment and decree dated 11.11.2011 decided the case in favour of the plaintiffs decreeing the suit for specific performance as well as for permanent injunction.

Aggrieved from this judgment and decree dated 11.11.2011, the defendants filed an appeal before the learned District Judge and the learned Additional District Judge, Patiala, vide judgment and decree dated 21.3.2012 dismissed the appeal. Aggrieved against the judgment and decree passed by the learned Additional District Judge, Patiala, the present regular

second appeal has been filed.

Notice of motion has been issued in this case. The respondents have put in appearance through Mr. Akshay Bhan, Senior Advocate assisted by Mr. Anurag Aggarwal, Advocate and contested this appeal. Lower Courts record has also been summoned.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that first of all the findings of facts given by the Courts below are concurrent and as per law. No substantial question of law arises in this regular second appeal. Further, I find that the defendants in the written statement indirectly admitted the thumb impression of Kesar Singh and signatures of Randhir Singh when they say that their thumb impression and signatures were obtained on blank papers. Therefore, the defendants are indirectly admitting their thumb impression and signatures on the agreement to sell and not denying their thumb impression and signatures specifically. Moreover, in the present case, the Hand-writing & Finger-print Expert has been examined, who has deposed that this thumb impression is of Kesar Singh and the signatures are of Randhir Singh. The attesting witness has also been examined. The mere fact that Deed Writer has not been examined will not, in any way, be fatal to the case of the plaintiffs.

The learned senior counsel for the appellants argued that the stamp papers used in the agreement to sell bear last digits 92 to 94 of ₹100/- each, but these have not been used as per the serial numbers 92 to 94, as

serial number 92 stamp paper has been used lastly. It is also argued that the fact regarding selling of motor in the last line was inserted later on. It was stated by the witness that it was not read over to him. Learned counsel for the appellants also argued that as to how the plaintiffs did come to know that three Kanals of one Khasra number were not owned by the defendants. In view of the arguments addressed by the learned senior counsel for the appellants, I find that no substantial question of law arises in this appeal. The findings of fact have already been given by the Courts below by appreciating the evidence in right perspective. These arguments, no where show that the agreement is result of fraud or is forged document. The plaintiffs by bringing cogent evidence, which is duly supported by documents, fully proved the case. The findings given by the Courts below are correct and as per law and the evidence has been appreciated in the right perspective by the Courts below. No cogent evidence has been produced by other side to prove that the agreement is result of fraud and falsely prepared document. Further in this case PW-1 Prince Bansal, Stamp Vendor has appeared, who stated that the stamp papers of ₹300/- of this agreement were sold by him to Randhir Singh-defendant and the thumb impression of the purchaser were obtained. Gurdev Singh-plaintiff himself appeared in the witness box as PW-2 and deposed as per the plaintiffs' version. He also proved the joint affidavit and the application for marking his presence etc. Gurmail Singh one of the attesting witness has also deposed regarding the attestation.

Therefore, from the above discussion, I find that no substantial

question of law arises in this regular second appeal. The findings given by both the Courts below are correct and as per law and have been given by appreciating the evidence in right perspective, which do not require any interference from this Court and the same are upheld.

Finding no merit in the present regular second appeal, the same is dismissed.

May 8, 2015.

(Inderjit Singh)
Judge

hsp