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

**RSA No.605 of 2012 (O&M))
Date of Decision: 20.10.2015**

SHEETAL KUMAR

.....Appellant

Vs

DES RAJ

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajinder Singh Rana, Advocate
for the appellant.

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?*

RAJ MOHAN SINGH, J.(Oral)

[1]. Defendant is in second appeal in a suit for specific performance filed on the basis of agreement to sell dated 30.12.2004.

[2]. Vide the aforesaid agreement to sell 2 *Kanals* of land was agreed to be sold by the defendant to the plaintiff for a total sale consideration of Rs.4,00,000/- per acre. An amount of Rs.65,000/- was paid as earnest amount and target date for execution of sale deed was fixed as 13.02.2005.

[3]. On 13.02.2005 it was holiday, therefore, plaintiff got his presence marked in the office of Sub-Registrar, Barara on 14.02.2005 and has always remained ready and willing to perform

his part of obligation. Thereafter plaintiff also issued legal notice dated 26.02.2005 to the defendant so as to provide him one opportunity to perform his part of obligation, but the defendant remained passive.

[4]. In the written statement filed by the defendant-appellant, plea of loan to the tune of Rs.50,000/- has been raised. The agreement to sell has been claimed to be a security document. Plea of inadequacy has also been raised. Defendant also claimed that there was a loan of the Bank on the land, therefore, without clearance of the same no sale deed could have been executed in favour of the plaintiff. He further claimed that there was no intention on the part of the plaintiff to purchase the land.

[5]. Both the parties led their respective evidence.

[6]. Plaintiff has got examined himself as PW-1 and reiterated the stand taken in the plaint. The agreement to sell has been duly proved by attesting witness namely Baljeet Singh who has been examined as PW-2. The agreement to sell was scribed by Sanjiv Kumar, Deed Writer who has also corroborated the factum of agreement to sell having been scribed by him while appearing as PW-3. In order to show readiness and willingness, plaintiff also got examined Kasturi Lal, Clerk from the office of the Tehsildar as PW-4.

[7]. The testimonies of the witnesses have been duly supplemented by the documents in the form of agreement to sell Ex.P1, Application dated 14.02.2005 Ex.P-2, postal receipt Ex.P-3,

legal notice Ex.P-4, *Jamabandi* for the year 2000-2001 Ex.P-5 and mutation Ex.P-6.

[8]. On the other hand, defendant only got examined himself as DW-1. No witness has been examined in support of loan transaction, nor any document has been tendered. For want of adequate evidence on behalf of defendant, trial Court on finding due execution of the agreement to sell decreed the suit. The defendant remained unsuccessful in First Appeal. Hence, the present appeal.

[9]. I have considered the submissions made by learned counsel for the appellant.

[10]. Due execution of agreement to sell stands proved with the testimonies of scribe and attesting witness. The documents have been duly exhibited. The defendant-appellant has failed to adduce any evidence worth consideration in the form of document of any loan or in respect of mortgage of the property with the Bank. Bald statement in the form of DW-1 has been considered to be insufficient for projecting lawful defence by the defendant.

[11]. In considered opinion of this Court, findings recorded by both the Courts below concurrently on the issues cannot be said to be perverse or the result of misreading of evidence in any manner.

[12]. No law point worth consideration is involved in this appeal, consequently the same is accordingly dismissed.

October 20, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE