

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

**RSA No.91 of 2012 (O&M)
Date of decision: 19.02.2015**

Darshan Singh ... Appellant
Vs.

Darshan Kumar and others ... Respondents

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:- Mrs. Baljit Mann, Advocate
for the appellant.

AMIT RAWAL J. (ORAL)

The present regular second appeal at the instance of appellant-defendant is directed against the judgment and decree of the trial Court, whereby, the suit for specific performance of the agreement to sell dated 05.09.1998, in respect of land measuring 37 kanals 03 marlas, has been decreed and the defendant-appellant has been directed to execute and register the sale deed in favour of the respondent-plaintiff, on receipt of balance sale consideration within a period of two months from the date of passing of the judgment and decree. The appeal filed by the appellant-defendant against the aforementioned judgment and decree has also been dismissed by the lower Appellate Court.

Ms. Baljit Mann, learned counsel for the appellant-

defendant in support of her grounds of appeal, contends that both the Courts below have committed illegality and perversity in decreeing the suit and in dismissing the appeal as the respondent-plaintiff not only in his cross-examination but in pleadings admitted that vendor had sold his crop to him being commission agent. She also referred to the cross-examination of the respondent-plaintiff to contend that vendor owed a sum of ₹ 4 lacs to the respondent. It was further argued that respondent-plaintiff had mis-used the blank signed paper and the conversion of the signed paper was an act of fraud, fabrication and forgery on behalf of the respondent-plaintiff.

I am afraid, the aforementioned submission of learned counsel for the appellant-defendant, sans merit, for the following reasons:-

Onus to prove alleged fraud and forgery is on person, who, asserts, in the instant case, the respondent-plaintiff, in order to prove the execution of the agreement to sell, much less, advancement of the earnest money, examined PW2-Ravi Kumar and PW5-Subhash Chander as attesting witnesses. The stamp vendor, Vijay Kumar, from whom the stamp papers for agreement to sell purchased appeared as PW1 and his register has also been brought on record to show that vendor had appended his signatures while getting the stamp paper issued. In such circumstances, the respondent-plaintiff had discharged the burden on issue Nos.1 and 2 whereas, on the contrary, appellant-defendant did not rebut the said

onus, by leading direct and cogent evidence except the bald statement of the defendant-appellant. Therefore, contention viz-a-viz the act of fraud and forgery on behalf of the respondent-plaintiff is hereby repelled. During the course of arguments, it has been submitted that appellant-defendant submitted a complaint to the police but the same has not been proved on record.

Be that as it may, as per submission, complaint was made in the year 2005 whereas, the suit was filed in the year 2003. Once the appellant-defendant has denied the execution of the agreement to sell, it does not lie in the mouth of the defendant-appellant to raise plea of readiness and willingness on the part of defendant.

Both the Courts below have rendered a finding of fact and law after examining the oral and documentary evidence and exercised discretion under Section 20 of the Specific Relief Act.

No fault can be found with the findings rendered by the Courts below as there is no illegality and perversity.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 19, 2015
savita