

RSA No.2943 of 2013 (O&M)

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

RSA No.2943 of 2013 (O&M)

Date of Decision: November 16, 2015

Dharam Vir Vermani

...Appellant

Versus

Kuldip Raj Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Chawla, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. :

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Amritsar, dated 30.10.2010, by which, suit for specific performance by way of a decree of possession of an agreement to sell dated 28.03.2002 with respect to the plot measuring 133.77 square yards, detailed in head note of the plaint, situated at Wadali Guru Urban, forming part of building Universal Screw Factory, I/s Abadi Universal Enclave, Chheharta, Amritsar, with consequential relief of permanent injunction, filed by the respondent-plaintiff stands decreed, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District Judge, Amritsar, on 10.01.2013.

2. Learned Counsel for the appellant contends that the

alleged agreement to sell dated 28.03.2002 was never entered into by the appellant-defendant. He contends that the pleadings and the evidence which have been brought on record, has not been rightly appreciated by the Courts below, in fact, they have misled themselves by holding that the said agreement to sell has been duly executed by the appellant-defendant. He places reliance upon the report of the Hand Writing and Finger Print Expert produced by the appellant-defendant, Sukhpreet Kaur DW-2, who had stated that the signatures on the agreement to sell and that of the standard signatures of the appellant-defendant did not tally. His further contention is that the appellant-defendant has been able to establish that the agreement to sell is a forged and fabricated document which contains the signatures of the appellant-defendant, which has been traced upon the said document and thus, cannot be made the basis for decreeing the suit of the respondent-plaintiff.

3. I have considered the submissions made by the counsel for the appellant and with his assistance have gone through the impugned judgments but cannot accept what has been asserted by him.

4. The agreement to sell dated 28.03.2002 has been duly proved to have been duly executed. In support of the pleadings, the respondent-plaintiff has examined PW-2 Akshay Kumar, Deed Writer, PW-3 Prem Pal and PW-4 Gurbax Rai, both attesting witnesses, who

have proved the agreement to sell dated 28.03.2002 executed by the appellant-defendant as also the receipt of earnest money amounting to ₹60,000/- as Ex.P-2. Hand Writing and Finger Expert Sukhjinder Singh (PW-6) has also proved the signatures of the appellant-defendant on the agreement to sell on the basis of his report Ex.PW-6/1 and graphic charts Ex.PW-6/2 to Ex.PW-6/10.

5. As regards the statement of Hand Writing and Finger Print Expert Sukhpreet Kaur, DW-2, who had appeared on behalf of the appellant-defendant, she could not pin point the model signatures in the two signatures on the basis of which she had given her opinion. Even the appellant-defendant Dharam Vir Vermani, DW-4, failed to point out the model signatures from which the two signatures, which were treated as model signatures, have been traced. The Courts below have, in detail, gone into the evidence led by the parties and discussed the same in the right perspective. That apart, the Court itself has examined the signatures of the appellant-defendant appearing on the written statement and has come to the conclusion that except for the minor natural variation, the same are signed by one and the same person. In the light of the Court recording its own findings, keeping in view the fact that the science of hand writing is not a perfect science and it has got only a corroborative value, the Court has rightly proceeded to rely upon the evidence led by the plaintiff, which is direct evidence of the two

attesting witnesses and the document writer apart from that of the Hand Writing Expert to hold that the agreement to sell has been duly executed and signed by the appellant-defendant.

6. It may be not out of way to mention here that the onus to prove that the agreement to sell was a forged and fabricated document, was upon the appellant-defendant who has not been able to support this assertion on the basis of evidence. That apart, the appellant-defendant has not even stated in his examination-in-chief that he has not purchased the stamp papers of ₹200/- on 28.03.2002 from the Stamp Vendor, on which the agreement to sell dated 28.03.2002 Ex.P-2 is scribed. He has not alleged any enmity with the attesting witnesses of the agreement to sell nor has he ever filed any complaint against the respondent-plaintiff for forging and fabricating the agreement to sell in question. Thus, it can be safely said that the appellant-defendant has not been able to discharge his onus with regard to proving the agreement to sell to be a forged and fabricated document as asserted by him. The Courts have rightly proceeded to hold that the appellant-defendant has, for the sake of denying the agreement to sell, so stated, in fact, he has not approached the Court with clean hands.

7. The sequence of events and as per the pleadings and the evidence brought on record clearly establishes that the agreement to sell dated 28.03.2002 has been duly executed by the appellant-

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defendant and thus, the findings returned by the Courts below cannot be faulted with.

8. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

9. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.7823-C of 2013

In view of the order passed in the main appeal, the present application for stay of alienation of the suit property, has become infructuous.

Disposed of as such.

November 16, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**