

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106

RSA No. 3815 of 2013

Date of decision: 02.11.2015

Khushi Ram

....APPELLANT

VERSUS

Dinesh Kumar

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Nipun Vashist, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Rewari dated 15.01.2011, by which the suit for possession by way of specific performance filed by the respondent-plaintiff of the agreement to sell dated 10.08.2005 for the sale of land measuring 2 Kanals 16 Marlas situated in the revenue estate of Village Sivana Moja Jhaduwas, Tehsil and District Rewari, stands decreed and the appeal preferred against the same by the appellant-defendant dismissed by the Additional District Judge, Rewari on 30.04.2013.

2. It is the contention of the learned counsel for the appellant that the amount of ₹ 70,000/- as earnest money, which is alleged to have been paid to the appellant, is not in presence of any witness. He further contends

that the said amount, if any, received and the alleged agreement to sell, was not intended for the sale but was only for the purpose of security so that the amount, which was a loan to the appellant-defendant, is returned. He contends that the agreement to sell has been fraudulently prepared by the respondent-plaintiff and, therefore, cannot be enforced in a Court of law. He, accordingly, submits that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments passed by the Courts below.

4. Even if the contention of the learned counsel for the appellant is accepted that the amount of ₹ 70,000/- as earnest money has not been paid in the presence of any witness, the same would not make much difference as it is admitted by the learned counsel for the appellant that the said amount, which is stated to have been given to the appellant-defendant, was a loan amount and for securing the same, his signatures were obtained.

5. As regards the execution of the agreement to sell is concerned, suffice it to say that the signatures on the said agreement to sell have been admitted but the alleged fraud being played upon the appellant-defendant has not been proved as the onus to prove the said assertion was upon the appellant-defendant. Except for his bald statement, there is no other evidence, which has been produced which would justify the assertion to prove that a fraud was played on him.

6. As regards the contention of the learned counsel for the appellant that the full consideration amount having been paid, the agreement to sell was not required to be executed, suffice it to say that it is between the

parties to agreement to proceed in the manner as they please. The circumstances in the present case and the evidence, which has been brought on record, clearly show that the agreement to sell was entered into between the parties on 10.08.2005 and the date fixed for execution of the sale deed was 31.07.2006.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

November 02, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**