

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

**RSA No. 112 of 2015 (O&M)  
Date of decision: 29.10.2015**

Subhash Chander

... Appellant

versus

Krishan Kumar

.... Respondent

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Dalip Kumar Tuteja, Advocate for the appellant.

**K.Kannan, J.**

The appeal is at the instance of the defendant against whom a decree for specific performance has been passed. The plaintiff is relying on an agreement for sale said to have been executed on 04.02.2005 under the terms of which the defendant had received the entire sale consideration of Rs. 2, 25,000/- and offered to register the property as and when the plaintiff made a demand provided, however, the plaintiff at least give week's time before the actual date of registration. The document had been written on stamp papers and said to have been scribed by an advocate in the Court complex. The document further recited that property has been however handed possession to the plaintiff pursuant to the agreement. The defendant denied the execution of the agreement, and therefore, the issue for consideration of the trial was whether the agreement had been duly executed or not. The trial Court observed that the defendant had not been definite about the fact whether he had been defrauded by the plaintiff or the plaintiff was guilty of any mis-representation. The Court held the agreement as established, but, however declined the relief of specific performance on the ground that the agreement had not been registered, although it resisted that the property was put in possession and declined the relief. In appeal by the plaintiff, the Court set out the

law correctly and held that the agreement did not require registration and if the defendant had received the whole of the sale consideration, there was nothing else to be proved. The plaintiff's own readiness and willingness had been borne out adequately through the evidence given on the trial and proceeded to set aside the judgment of the trial Court and allowed the appeal.

Learned counsel appearing on behalf of the defendant contends that the agreement did not contain signature on the 1<sup>st</sup> page which made recital of the fact of payment of Rs. 2, 25,000/-suspicious and since it contained signature only on the 2<sup>nd</sup> page there ought to have been independent evidence of payment of Rs. 2,25,000/-. I reject this contention as untenable as there is no law that compels the document to be signed on each page, although it would appear to be the practice. If the defendant was denying the agreement itself and the Court found that the plea in defence did not even make it clear whether he was denying the execution of the agreement or he was pleading for a case of fraud or mis-representation of the plaintiff. If there was adequate oral evidence through witnesses that the document was executed then the plea that the 1<sup>st</sup> page in the agreement did not contain the signature of the defendant and therefore, the payment of consideration of Rs. 2,25,000/- cannot be accepted would require to be rejected. Since the document refers to the property as having been delivered, it was most crucial whether such delivery of possession had been established or not and if it was so established then the contention of defense that the agreement was not executed must obtain natural inference that such defence is false. The Lower Appellate Court had considered the fact of decision as having been established by reference to the electricity bills as having been paid by the plaintiff in relation to the property. Learned counsel would state that the electricity bills did not make reference to the door No. and it cannot be taken that the plaintiff was in possession of the property by mere production of certain electricity bills. Significantly, the defendant who claimed to be

in possession was not prepared to file the electricity bills for any other property to show that the bills paid by him referred to the suit property.

The Lower Appellate Court made reference to yet another document, namely, the registration certificate for purchase of two-wheeler by the plaintiff who had declared the suit property as the place of residence for the plaintiff. The Court found that the recital of possession as having been declared was capable of being assessed as true with reference to other documentary evidence and oral evidence given by the plaintiff and held, therefore, that the plaintiff's possession was also proved which was also consistent only with the case of the agreement being true. If it was a residential house, it should have been impossible for the plaintiff to dislocate the defendant unless the defendant had offered to sell the property itself. The counsel would argue that water charges are being paid by the defendant and that should have been taken note of as proving the defendant's possession.

The assessment of possession is essentially a question of fact and if the Court below has relied on some documents which evoked confidence for such assessment, I will be loathe to make an intervention on such an appreciation of facts. Both the Courts have found if the plaintiff's possession had also been established and true then there exists nothing in particular for consideration of the 2<sup>nd</sup> appeal in favour of the defendant.

The regular second appeal is without merit and is dismissed as requiring no intervention.

**(K.KANNAN)**  
**JUDGE**

29.10.2015

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