

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

RSA NO. 1179 of 2015(O&M)

Date of decision: 20.11.2015

Bukan Singh

.....Appellant

versus

Gurjit Singh

.....Respondent

Coram: Hon'ble Mr. Justice K.Kannan

Present: Mr. Ish Puneet Singh, Advocate
for the appellant.

K.Kannan, J.(Oral)

The suit for specific performance decreed by both the courts below is the subject of challenge in the second appeal.

The defendants contention before this court is that the agreement is purported to have been executed in favour of the plaintiff but only the plaintiff's father has signed. He has not termed himself as power of attorney and even at the time of evidence it was stated that only the father was at the Registrar's office with cash consideration for securing the sale deed. The agreement, therefore, could not be enforced at all at the instance of the plaintiff.

I would hold that this submission is liable for rejection, for, if have to say, this submission for rejection, for, if the document is shown to be fully supported by consideration and the defendant is shown to have executed the agreement of sale in favour of the specified person and the document contains a signature of the vendor, there is no further requirement when the vendee must also sign the document. This is by virtue of the fact that Section 20 (4) of

the Specific Relief Act, 1963 specifically lays down as under:-

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

This section removes the plea of want of mutuality as impermissible and consequently, the fact that vendee did not sign in the agreement cannot have any consequence.

Second plea which is made is that the plaintiff was admittedly not present at the Registrar's office and it was stated that the only father was present on 1.10.2008, the date mentioned for performance i.e; 30.09.2008 being a holiday. The plaintiff's own presence at the Registrar's office was not even attempted to be shown and the presence of the father with consideration and even without informing the defendant cannot show readiness and willingness. There is no statutory compulsion that the vendee must record his presence entered before the Registrar. It has become more a matter of practice of parties to create evidence of proof of presence. If there was otherwise proof available through oral evidence about the pressure and readiness, it is wholly unnecessary to look for any endorsement before the Registering officer. The want of communication to the defendant after being present is equally unnecessary. For defendant it was obligatory on his part to be present for execution of sale deed and if the last date was a holiday, he ought to be present for executing the sale deed in terms of the agreement. It was not defendant's case that he appeared at the

Registrar's office and gave his willingness to sell the property. On

the other hand, his contention was that he had merely affixed thumb impression on blank stamp papers.

The appellant has himself made available a copy of the agreement alongwith the appeal. The document is drawn on three stamps of ₹ 100/- valuation and on the first page even the photograph of the first defendant has been affixed and his thumb impression affixed on the photograph itself. There are thumb impressions marked at every page with the name and the father's name along side the thumb impression in each one of the pages. Counsel wants to contend that at the 3rd page, there is irregular spacing. I find nothing abnormal or artificial and since the document is written with no lines drawn, the line of writing appears to be wavy and I find that to be most natural. I cannot also accept a plea that the defendant was affixing his thumb impression on blank papers where there also exists a photograph on the first page and he could not have merely affixed his thumb impression on a photograph containing blank papers. If he had been so indiscreet to merely affix thumb impressions wherever, the plaintiff had wanted, he cannot be heard to say that he did not know what the document contained. This ought to follow an important principle of law that a person of full age and understanding, if he subscribes his signature or thumb impression to a document without so much knowing what the document contained, he shall take consequence of his fool hardiness and cannot take advantage of his own assumed innocence.

There is no proposition of law that could favour the

appellant. Regular second appeal is dismissed as without any merits.

20th November, 2015

Shivani Kaushik

[K.KANNAN]
Judge