

R.S.A No. 1616 of 2015 (O&M)
Date of decision:- 28.04.2015

Sube Singh ...Appellant

Versus

Ramdia and anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Keshav Pratap Singh, Advocate
for the appellant.

RITU BAHRI J. (Oral)

The present regular second appeal is directed against the concurrent finding of facts recorded by both the Courts below whereby the suit of the plaintiff-respondent No. 1 (for short 'respondent No. 1') was decreed.

Respondent No. 1 entered into an agreement to sell private plot No. 4 measuring 203 sq yards comprised in rectangle No.27 killa No. 10 min khewat No. 149 khatoni No. 245 vide registered sale deed No. 5993/1 dated 09.03.2000 @ Rs.2800/- per sq yards. Plaintiff/appellant and respondent No. 2 received Rs.1,15,000/- as earnest money from respondent No. 1 vide agreement and receipt dated 18.02.2006 and the sale deed was to be executed and registered in favour of respondent No. 1 or in the name of the person of his choice on or before 22.05.2006. On 21.05.2006 before the date already fixed for exeuction and

registration of sale deed, the date was extended from 22.05.2006 to 09.06.2009 with mutual consent after receipt of Rs.3,53,400/- as additional earnest money vide separate endorsement on the back of the said agreement to sell. Hence, the appellant as well as respondent No. 2 received total sum of Rs.4,68,400/- as earnest money till date and balance amount of Rs.1,00,000/- was to be paid at the time of registration of the sale deed. On 08.06.2009, respondent No. 1 approached the appellant as well as respondent No. 2 and asked them to come present in the office of Sub Registrar, Kaithal on 09.06.2009 for execution and registration of the sale deed but on the said date only respondent No. 1 went to the office of Sub Registrar, Kaithal along with balance sale price and expenses for stamps and registration charges etc and waited for appellant as well as respondent No. 2 but they did not turn up and ultimately respondent No. 1 got his presence marked before Sub Registrar, Kaithal by way of attestation of his affidavit.

From the pleading of the parties, following issues were framed:-

- “1. Whether the defendants have entered into an agreement to sell dated 18.02.2006 for a consideration of Rs.2800/- per sq yards and received Rs.1,15,000/- as earnest money?OPP
2. Whether the plaintiff is always ready and willing

to perform his part of contract? OPP

3. Whether the suit is time barred? OPD

4. Relief.

The agreement to sell was executed by the present appellant and respondent No. 2 (brother of the appellant) with respondent No. 1. Both the brothers were joint owners of the property in dispute. While extending the time from 22.05.2006 to 09.06.2009 for execution of the sale deed, Badan Singh-respondent No. 2 received amount of Rs. 3,53,400/- as additional earnest money vide separate endorsement on the back of the said agreement to sell.

P.W.3 Pala Ram, scribe of the endorsement appeared in the witness box deposed that the parties to the suit are known to him and he made the endorsement (Ex P3) on agreement to sell Ex P1 on the asking of the parties and contents of endorsement were read over and explained to the parties and respondent No. 2 received the amount of Rs. 3,53,400/- on his behalf and on behalf of his brother i.e appellant and also made the entry in his own hand on the endorsement (Ex P3). The possession of the plot was given was handed over to respondent No. 1. Further he explained in his cross examination that the endorsement was signed by him with the same pen, however, he might be having two pens on the date of writing the endorsement and he may have signed with different pen. Further P.W.4 Ramdia in his

cross examination has stated that the signatures of Sube Singh could not be taken on the endorsement on that date, as he used to give thumb impression and the ink pad was not available at the time of writing the endorsement. The stand of the appellant is contradictory as regard to the endorsement. In the written statement it has completely denied while in the evidence, the appellant and respondent No. 2 came with a different version that the signatures of Badan Singh were obtained fraudulently at the time of execution of the agreement. Once the signatures are admitted, then the burden shifts on the party that those were obtained on blank papers by fraud or misrepresentation, which alleges fraud and misrepresentation. In the absence of any evidence with regard to the fraud and misrepresentation, the version of the appellant and respondent No. 2 were found to be not believable.

Both the Courts below have taken into consideration the report of Shamsheer Singh Malik, Hand Writing and Finger Print Expert (Ex PW6/A) wherein it was mentioned that writing on the endorsement to the effect that respondent No. 2 had received Rs.3,53,400/- was in the handwriting of respondent No. 2. Further respondent No. 2 while appearing in the witness box has admitted his signatures on the endorsement. However, his plea that the

signatures were taken on blank papers has not been believed, as no evidence was led to show that the fraud has been committed. Further, the appellant and respondent No. 2 had not made any efforts to rebut the opinion given by Shamsheer Singh Malik, Hand Writing and Finger Print Expert by examining the Handwriting and Finger Print Expert.

Once the execution of the agreement was not in dispute between the parties and no evidence was led by the appellant and respondent No. 2 that any fraud has been committed, the inference was drawn that respondent No. 1 is in possession of the disputed plot as he had paid Rs.4,68,400/- as earnest money and on the date of registration of the agreement, appellant and respondent did not turn up.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

April 28, 2015
G Arora

(RITU BAHRI)
JUDGE