

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

RSA-982 of 2013

Date of decision:19.02.2015

Jagdish Chander

..... Appellant

VERSUS

Jai Paul

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Kiran Kumar, Advocate
for the appellant.

MAHAVIR S. CHAUHAN J. (ORAL)

This is defendant's second appeal to challenge judgment/decreed dated 03.10.2012 whereby learned District Judge, Jalandhar ('First Appellate Court'- for short) has affirmed judgment/decreed dated 04.04.2011 passed by learned Civil Judge (Junior Division), Jalandhar, ('trial Court'- for short) decreeing respondent's suit for possession of land in suit by specific performance of agreement to sell dated 04.08.2004.

It is argued by learned counsel for the appellant that in the agreement in question it has been recorded that possession of the suit land was delivered to the respondent at the time of execution of the said agreement and that being so, suit for possession is not maintainable. Even otherwise, according to learned counsel for the appellant, the agreement is suspicious

in so far as signatures of the appellant were obtained thereon by misrepresentation.

Nothing more has been urged.

Respondent had approached the learned trial Court for specific performance of agreement to sell dated 04.08.2004 by alleging that the appellant had thereby agreed to sell the suit property to him for a consideration of Rs.1,60,000/- and the entire amount of consideration was paid by him to the appellant but the appellant failed to execute the necessary sale deed. It was also stated by the respondent that on the appointed day, i.e., 17.08.2006, he remained present in the office of Sub-Registrar concerned, having ready with him sufficient amount to meet the expenditure of execution and registration of the sale deed but the appellant did not come forward to perform his part of the obligation.

The suit was contested by the appellant on the plea akin to the one put up on his behalf during the course of the arguments.

Issues were framed. Evidence was received. Parties were heard and the learned trial Court on the basis of the evidence available on record and submissions made at the bar decreed suit of the respondent for specific performance of the agreement to sell dated 04.08.2004 directing appellant to execute the necessary sale deed. The judgment/decreed of the learned trial Court, as aforesaid, has been upheld by the learned First Appellate Court in appeal

(Civil Appeal No.123/2011) vide judgment dated 03.10.2012.

The only contention raised on behalf of the appellant is that in the agreement, it has been specifically stated that possession of the suit property was delivered to the respondent and signatures of the appellant were obtained on the agreement under misrepresentation. As regards the contention showing delivery of possession to the respondent, suffice it to say that the agreement cannot be construed literally and, instead its intention has to be taken note of. From the circumstances attending on the execution of the agreement and conduct of the parties to the agreement it is not possible to assume that possession of the suit land was in fact delivered to the respondent. Though it is stated to have been shown in the agreement that possession of the suit land was delivered but there is no evidence to substantiate this aspect of the matter. That being so, no importance can be attached to the words 'possession delivered', and the agreement in question has to be taken to be simpliciter an agreement of sale.

The other contention pertaining to signatures of the appellant having been obtained on the agreement by misrepresentation, on one hand leads to the undeniable inference that the appellant does not dispute his signatures on the document and on the other hand the allegations regarding misrepresentation has remained unproved. Therefore, arguments advanced on behalf of the

appellant cannot be accepted.

In view of the above, coupled with the fact that the appeal is not shown to involve any question of law, much less a substantial question of law, I do not find any ground to interfere with the concurrent findings of fact recorded by the Courts below.

Dismissed.

No costs.

February 19, 2015
m. sharma

(Mahavir S. Chauhan)
Judge