

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2349 of 2015 (O&M)

Date of Decision: 07.08.2015

Bhulla through his LRs

.... Appellants

Versus

Vinay Kumar

.... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Diwan S. Adlakha, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This is an appeal brought by the unsuccessful plaintiff who has lost in both the courts below in a suit for specific performance of contract of sale of immovable property and consequential decree for possession of the suit land.

2. The only issue pressed in second appeal by the plaintiff is that he did not enter into a sale deed with the defendant who had signed up only for the making of a mortgage deed.

3. Learned counsel for the appellants submits that even earlier there were dealings between the parties involving simple mortgages executed between themselves. The burden then is on the plaintiff to discharge and prove that the intention was not to transfer the suit property but to mortgage

it.

4. Of the many reasons contained in the judgment of the learned District Judge, Yamuna Nagar the predominant one is that Randhir Singh and Asha Ram, both Lambardars residing in the local area where the parties resided were signatories to the sale deed as attesting witnesses but were not produced in the stand to depose as to the facts in the making of the disputed document. Had the plaintiff-appellant been serious enough to bring home the charge of fraud in the making of the sale deed then he could have at least produced the attesting witnesses to the sale deed to support his case and of the circumstances obtaining when it was registered before the Sub Registrar. It is also not the case of the appellant that he did not visit the Tehsil office; or that his photographs were not taken or were planted subsequently on forged papers or that sale consideration was not paid or received. If the appellant chose to sign his papers with eyes wide open then he did not establish his case by evidence of any fraud committed by the intending vendee. Neither did he make a complaint to the police or file a civil suit to get rid of the disputed document. By the very nature of things fraud is easily alleged but is largely difficult to prove and the court is left to ponder and weigh the scales and balance the probabilities of the case based upon the evidence adduced by the parties ever guiding the court on which side to lean. If the courts a quo have leaned in favour of the successful party then I hardly find any ground warranting interference in the fair and just judgment of the court of first appeal dismissing the appeal.

5. No question of law arises in this appeal for consideration since the determination is based purely on facts and appreciation of them on the

evidence on record.

6. As a result the appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

07.08.2015
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