

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

RSA No. 2775 of 2015 (O&M)

Date of decision: December 4, 2015

Amrik Singh and another

...Appellants

Versus

Gajjan Singh

...Respondent

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

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Gurcharan Singh, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The suit for specific performance which was decreed was brought to challenge by the defendants in appeal where again the trial court judgment was confirmed.

2. The suit was for enforcement of the agreement dated 14.6.2005 in respect of 12 kanal land belonging to the defendants, undertaking to sell the property for Rs. 5.25 lakhs. The agreement recited a receipt of advance of Rs. 2.50 lakh and the sale deed was to be executed on or before 14.6.2006. The plaintiff also sought for alternative prayer of damages for Rs. 15 lakhs and for an injunction restraining the sale, if the relief for specific performance cannot be granted.

3. The defendants took a plea that they were in friendly relation with the plaintiff's son and when they sought for a loan of Rs. 1.20 lakh

from the plaintiff's son, he secured the same from his father, who demanded their signatures on several stamp papers by way of security for re-payment of the loan. The defendants had signed up blank stamp papers under the belief that only a transaction of loan would be recorded. The plaintiff has fabricated the document of agreement. It was further the plea that the defendants had also re-paid the loan and when the plaintiff's son died, the father became greedy to act in breach of his earlier undertaking not to put any of these blank papers and filed a suit for specific performance.

4. The plaintiff examined himself and witnesses to the agreement, while the defendant No.1 examined himself to contend that there was no valid agreement and that the loan had been discharged. The defence was not accepted and the courts below found that the agreement was duly executed and granted the decree.

5. The learned counsel appearing for the defendants reads to me the evidence of the scribe who was not able to recall the time when it was actually written and also the evidence of the plaintiff, who, though remembered the year of execution, did not recall the date and the month of execution of the agreement. The plaintiff admitted that one of the witnesses in the agreement was his relative, though later denied during the course of his evidence. The plaintiff was also unable to recall the order of signature of the witnesses and could not also recall the name of the scribe. The learned counsel would state these fallibilities as going to the root of the matter and the courts below ought to have, therefore, accepted the defence and dismissed the suit.

6. If the whole case is spun around a theory that the signature on

document had been taken on blank papers and the plaintiff proves the execution by examining the scribe and the witness, the issue would be riveted to examining whether the agreement itself was not with an intent to be acted upon as such, and whether it was merely an instrument of loan. If there had been any credible evidence about when the defendants re-paid the money or if it was re-paid in the presence of any person or after payment of money, the defendant demanded the return of the document, then there was a scope for examining whether the discretionary relief of specific performance could have been granted. I will not make much of the fact that the plaintiff did not recall the name of the scribe or did not know the order in which the witnesses had signed. It was again irrelevant when he recalled the year of execution of the agreement nearly 8 years after the execution but did not remember the date and month. The discrepancies are on unimportant facets of the agreement and the plea in defence being one of discharge of loan which was not proved, the relief of specific performance granted would seem to accord with the evidence. The decree granted by the two courts below would require to be sustained.

7. The second appeal is under the circumstances dismissed as without merits.

December 4, 2015
prem

(K.KANNAN)
JUDGE