

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

**RSA No.2575 of 2014 (O&M)
Date of decision: December 18, 2015**

Jai Kumar

...Appellant

Versus

Swaran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashish Gupta, Advocate
for the appellant.

JASPAL SINGH, J.

CM No.6063-C of 2014

Application under Section 149 CPC for making good the
deficiency of Court fee is allowed, as prayed for.

CM No.14103-C of 2015

Application is allowed as prayed for.

Documents are taken on record.

RSA No.2575 of 2014

1. The instant appeal has been preferred by defendant-Jai Kumar challenging judgment and decree dated December 07, 2010 passed by the trial Court as well as judgment and decree dated November 22, 2013 passed by the lower Appellate Court whereby the findings recorded by the trial Court have been upheld and the appeal preferred by defendant has been dismissed. Accordingly, the suit filed by the respondent-plaintiff for specific performance of agreement to sell dated May 25, 2005 has been decreed by

directing the appellant-defendant to get the requisite sale deed executed and

registered in favour of the respondent-plaintiff after receiving the balance sale consideration as per terms and conditions of the aforesaid agreement to sell within a period of three months and further, to direct the appellant-defendant to handover the possession of suit land to the respondent-plaintiff.

2. While assailing the findings returned by the trial court and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellant that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. The impugned judgments and decrees have been challenged by the learned counsel for the appellant mainly on three grounds: (i) agreement to sell dated May 25, 2005 (Ex.P1) is of forged and fabricated document and the appellant-defendant never entered into the aforesaid agreement qua the suit land with respondent-plaintiff. It also does not bear his signatures: (ii) that the stamp paper on which agreement to sell dated May 25, 2005 was scribed was purchased on May 28, 2005 as is evident from the backside of the stamp paper: and thirdly that evidence of PW-5 Balbir Singh, Stamp Vendor, Tehsil Gharaunda, District Karnal cannot be taken into consideration as the oral evidence of the plaintiff except cross-examination of PWs Swaran Singh and Rattan Singh was closed by order dated November 24, 2009 whereas PW-5 Balbir Singh was examined on April 28, 2010. The quashing of execution of agreement to sell dated May 25, 2005 does not arise at all when the stamp paper on which the agreement to sell

impugned judgment and decree rendered by the trial Court and wrongly affirmed by the lower Appellate Court are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant appeal.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but finds the same to be without any factual or legal substance.

4. As far as the execution of agreement to sell dated May 25, 2005 (Ex.P1) is concerned, no iota of evidence has been brought on record by the defendant that it is a forged and fabricated document. It is well established proposition of law that a person who takes any such plea is obliged to prove the same by way of adducing cogent and convincing evidence whereas in the case in hand except a bald assertion of the defendant, there is nothing in this regard. Even otherwise also, agreement to sell dated May 25, 2005 has been proved by the respondent-plaintiff by examining its attesting witnesses. Though they have been thoroughly cross-examined by learned counsel for the defendant but nothing fruitful to the case of the defendant could be wrenched out either of them.

5. As far as the contention with regard to date of purchase of stamp paper is concerned, same also carries no legal weight in view of the fact that Balbir Singh, stamp vendor has been examined by the respondent-plaintiff as PW-5 who has categorically deposed on oath that defendant Jai Kumar had purchased the stamp paper against the entry No.3184 on May 25, 2005 from him. A close scrutiny of the stamp paper also reveals that in fact the date mentioned at the back of the stamp paper is May 25, 2005

alleged by learned counsel for the appellant. Moreover, the entry with regard to purchase of stamp paper has also been made in the stamp register of the scribe (PW-5) and there is no such entry in the register of Balbir Singh (PW5).

6. Similarly the contention put forth by learned counsel for the appellant-defendant that evidence of Balbir Singh, Stamp Vendor cannot be read in evidence is concerned, it is also of no assistance to the defendant, especially in the circumstances that PWs Swaran Singh (PW-1) and Rattan Singh (W2) were examined much prior to the closer of their evidence on November 24, 2009. As far as Balbir Singh is concerned, he was examined on April 28, 2010 and at that time learned counsel for the defendant did not raise any objection. Moreover, order dated November 24, 2009 was challengeable by way of revision before this Court but no such initiative was taken by the defendant. Since Balbir Singh (PW5) has been examined without any objection from the side of the plaintiff-defendant, his statement cannot be disbelieved or discarded. Even otherwise, the testimony of Balbir Singh (PW5) is essential for the proper and effective adjudication of the matter in controversy and it extends help to the Court. Thus, it is amply proved on record from the evidence brought on record by the respondent-plaintiff that appellant-defendant Jai Kumar executed an agreement to sell dated May 25, 2005 (Ex.P1) in favour of respondent-plaintiff in respect of the suit land for a sale consideration of Rs.3,00,000/- and received a sum of Rs.1,15,725/- as earnest money. Since agreement to sell is duly proved, learned trial Court has rightly decreed the suit for specific performance

the appeal preferred by the appellant-defendant. This court does not find any cogent ground to meddle with a findings recorded by the trial court, affirmed by the lower appellate court as well as passing of decree of specific performance. This court is of the considered view that instant appeal is without any merit. As such, the same is dismissed whereby the impugned judgments and decrees passed by the courts below are affirmed. However, parties are left to bear from any cost.

December 18, 2015
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(JASPAL SINGH)
JUDGE