

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

**RSA No.2790 of 2014 (O&M)
Date of decision:06.11.2015**

Sajjan Singh

... Appellant

Vs.

Kapoor Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vikas Singh, Advocate
for the appellant.

Mr. Deepak Aggarwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for specific performance of the agreement to sell dated 30.10.1999, in respect of land measuring 20 kanals 18 marlas, has been decreed.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellant-defendant submits that readiness and willingness was conspicuously absent as the target date for execution and registration of the sale deed was 30.10.2000, whereas, the suit had been filed on 20.09.2003. He further submits that agreement to sell was specifically denied as the appellant-defendant had been

supplying agricultural produce to the respondent-plaintiffs, who in lieu thereof had been issuing Form J and in this process used to obtain signatures on the blank stamp papers and the said blank stamp papers had been used for converting the same into agreement to sell. The trial Court decreed the suit, however, before the lower Appellate Court, an application under Order 41 Rule 27 of the Code of Civil Procedure had been filed to examine the handwriting expert to belie the signatures on the agreement to sell, but the same has also been rejected, thus, both the Courts below have erroneously and perversely decreed the suit, whereas, the suit was liable to be dismissed, therefore, prays for setting aside of the impugned judgments and decrees of the Courts below, as substantial questions of law arises for determination of this Court.

Mr. Deepak Aggarwal, learned counsel appearing on behalf of the respondent-plaintiffs submits that appellant-defendant did not step into witness box to belie his signatures on the agreement to sell and his evidence was closed by order. The application for additional evidence in this regard was also declined as it tantamounts to filling up lacunae. The plea of readiness and willingness cannot be taken as the agreement to sell was specifically denied. In support of his aforementioned submissions, he relied upon the judgment of this Court in **Lal Chand vs. Tek Chand 2013(5) R.C.R.(Civil) 104.**

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

It is settled law that a person, who has denied the agreement to sell, cannot be permitted to take plea of readiness and willingness, therefore, the question of appearing of the plaintiffs before the Sub Registrar on the stipulated date is immaterial. There is a specific pleading in paragraph 4 of the plaint to the effect that defendant assured the plaintiffs, that the sale deed shall be executed in his favour. Having failed to do so, plaintiffs filed a suit. The appellant received a sum of ₹6,00,000/- as earnest money against the total sale consideration of ₹6,50,000/-. Had there been any misrepresentation and fraudulent act on the part of the respondent-plaintiffs in filling up blank signed papers, nothing prevented the defendant-appellant to lodge a criminal complaint. If any complaint had been lodged, the same has not seen the light of the day and nor has been produced before the Court.

Be that as it may, the fact remains that appellant has not been able to deny the signatures on the agreement to sell. In essence, his evidence was closed by order. The application under Order 41 Rule 27 CPC was moved to examine the handwriting expert and the same was also dismissed. Similarly, an application has also been moved in this Court to place on record *jamabandis* and photographs regarding construction. The plea that agreement to sell has not reflected correct part of the construction. No evidence has been led by the defendant-appellant to show that house was constructed much before the execution of the agreement to sell.

Additional evidence sought tantamounts to de-novo trial. Even there is no averment in the application that it could not be lead “despite exercise of due diligence”. The plea of Mr. Vikas, that respondent-plaintiffs had admitted with regard to construction of house and non-mentioning about the house in the agreement to sell would lead to irresistible conclusion that agreement was not actually entered, is not tenable as no evidence has been led.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 06, 2015
savita