

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

RSA No.578 of 2015 (O&M)

Date of decision: 19th February, 2015

Kamruddin (deceased) through LRs

... Appellants

Versus

Jameela

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gorakh Nath, Advocate
for the appellants.

FATEH DEEP SINGH, J.

Faced with two conflicting views, one expressed by the learned Additional Civil Judge (Sr. Divn.) Hathin through judgment and decree dated 17.08.2012 refusing to decree the suit for specific performance and in stead decreeing it for the recovery and its reversal by the learned Additional District Judge, Palwal through judgment and decree dated 10.11.2014 decreeing the suit of the plaintiff for specific performance, has led to this regular second appeal.

Heard Mr. Gorakh Nath, Advocate representing the defendant/appellants.

The claim of the plaintiff Smt.Jameela is that defendant/appellant Kamruddin entered into an agreement to sell

dated 27.11.2007 pertaining to 13 Marlas of land whereby he undertook to sell the same for a sale consideration of ₹2,50,000 and received ₹50,000 from her as earnest money and in spite of her readiness and willingness throughout the defendant refused to do so. However, it is the stand of the defendant that the same was a forged and fabricated document.

As is reflected from the findings of the trial Court, purely on the sole consideration that the suit property was of more value of ₹5,00,000 on the date of agreement when it has been shown to be for a sum of ₹2,50,000 was unconscienceable and thus, has exercised its jurisdiction. However, the first appellate Court has held that in the absence of any such evidence as to the then market value of the suit property and there being no evidence in that direction it was highly inappropriate for the learned trial Court to have adjudged on this aspect, certainly to the mind of this Court the finding of lower Court is based on surmises and conjectures. Since initial onus to prove the case lays upon the plaintiff and the defendant has failed to rebut the same and the evidence by way of Scribe PW3 Rafik Ahmad, Advocate who scribed the agreement Ex.P1 and its receipt Ex.P2 and who also is a witness to these documents and there is not even an iota of evidence led by the defendant to disprove the evidence by examining any Handwriting and Fingerprint Expert to show that these documents do not bear his thumb impressions and therefore, has miserably failed to prove his stand. Since the agreement to sell stands established, its

natural consequences need to follow. Thus, the instant appeal being wholly without any merit stands dismissed in limine.

**(FATEH DEEP SINGH)
JUDGE**

February 19, 2015

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