

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

**RSA No.311 of 2014 (O&M)
Date of decision: 31.08.2015**

Satminder Singh

... Appellant

Vs.

Angrej Singh

... Respondent

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. Avnish Mittal, Advocate, for the appellant.

Mr. Baljit Singh, Advocate, for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendant is in regular second appeal challenging the concurrent finding of fact rendered by both the Courts below, whereby, the suit for specific performance of the agreement to sell dated 01.07.2004, in respect of the suit property, measuring 185.73 square yards, has been decreed and appellant-defendant has been called upon to execute a sale deed on receipt of balance sale consideration within a time specified therein.

Mr. Avnish Mittal, learned counsel appearing on behalf of the appellant-defendant submits that though the agreement to sell was not denied but it was clarified that Manjit Singh, attesting witness to the agreement to sell had played a fraud upon the defendant-appellant, inasmuch, as after administering some liquid, signatures

had been obtained on certain papers which were used in agreement to sell. Appellant-defendant neither agreed to sell nor received any earnest money. The plaintiff has not examined Deed Writer, Ramesh Chander to prove the execution of the agreement to sell. On going through the contents of the agreement to sell, this fact is not discernible from the record, much less, contrary to the record. Even Manjit Singh to a specific question stated that he did not know about the appellant-defendant, namely, Satminder Singh, therefore, both the Courts below committed illegality and perversity in exercising the discretion under Section 20 of the Specific Relief Act (hereinafter referred to as the Act), by decreeing the suit. Whereas, aforementioned evidence has not been noticed, therefore, the appeal involves the substantial questions of law to be adjudicated by this Court. Even otherwise, the plaintiff has failed to prove the readiness and willingness.

Mr. Baljit Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that appellant-defendant has coined a story, firstly denying the execution of the agreement to sell and, thereafter, by obtaining of his signatures/ thumb impressions on certain papers by playing a fraud and deception. He further submits that the defendant has neither stated in, examination-in-chief nor in written statement that signatures were obtained on 'blank stamp papers'. Thus, both the Courts below have rendered a finding of fact which does not warrant any interference as agreement to sell, has

been proved through the testimony of PW2-Manjit Singh, one of the attesting witnesses. Both the Courts below have exercised the discretionary power under Section 20 of the Act, by decreeing the suit, much less, no substantial question of law arises for adjudication of the appeal.

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

After noticing the rival contentions of the parties to the lis, it has surfaced that appellant-defendant has denied the execution of the agreement to sell, but simultaneously, came out with a stand that his signatures/thumb impressions were obtained by Manjit Singh on certain blank papers. Had it been so, nothing prevented the appellant-defendant to lodge a complaint to police against Manjit Singh or against respondent-plaintiff. Even DW1- Ramesh Chander, Deed Writer, examined at the instance of the appellant-defendant, has not supported the version that the agreement to sell was scribed by him, rather he denied that he did not scribe the agreement to sell Ex.P1 and Ex.P6. The other scribe - Ramesh Kumar though summoned, had been given up. The execution of the agreement to sell has been proved through the testimony of Manjit Singh. In essence, provisions of Section 68 of the Indian Evidence Act, had been complied with. Plaintiff has also appeared in the witness box as PW-1 and deposed in line with the averments made in the plaint and has also proved on record the affidavit and marked his presence on

02.11.2004. Even the legal notice dated 22.03.2005, Ex.P3, was served upon the appellant-defendant to perform his part of the agreement and the same was not replied. However, the legal notice dated 24.03.2005, Ex.P7 was sent to Manjit Singh, attesting witness, regarding alleged deception and fraud. Had it been so, nothing prevented the appellant to reply the legal notice dated 22.03.2005, Ex.P.3. The plaintiff has replied the legal notice dated 24.03.2005 vide Ex.P-9, target date of agreement to sell dated 01.07.2004, for execution and registration of the sale deed was fixed for 01.11.2004, and suit has been filed on 26.07.2005 after serving the legal notice. Thus, it cannot be said that readiness and willingness at the instance of the respondent-plaintiff was conspicuously wanting.

In view of what has been observed above, there is no illegality and perversity in the finding and the same has been rendered on appreciation of oral and documentary evidence. Appeal does not involve substantial question of law to be determined by this Court.

Consequently, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 31, 2015
savita