

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

**RSA-630 of 2015 (O&M)
Date of decision: 23.02.2015**

Jai Bhagwan

.... Appellant

Versus

Rampal

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Jaspal Singh, J.(Oral)

Dissatisfied with the judgment and decree dated October 30, 2014 passed by the learned Additional District Judge, Jind, whereby the judgment and decree dated January 10, 2012 passed by the learned trial Court was upheld, appellant-defendant has preferred the instant regular second appeal. The suit for possession by way of specific performance was decreed in respect of subject matter of the instant lis and the appeal preferred by Jai Bhagwan, the present appellant was dismissed.

While assailing the judgments and decrees rendered by both the Courts below, it has been argued with vehemence by the learned counsel for the appellant that both the Courts below have failed to appreciate that the respondent has committed a fraud with

the appellant-defendant who is an illiterate person. In fact, the thumb marks of the appellant/defendant were obtained on the pretext of cancellation of the pronote and receipt and the said document has subsequently been converted into an agreement of sale. The falsity of the respondent-plaintiff and fraud played by him is evident from the simple fact that registered agreement of sale Ex.P1 dated November 28, 2006 depicts that though the total sale consideration has been recited to the tune of Rs.46,000/- yet out of it, a sum of Rs.40,000/- has been shown to have been received by the appellant in cash. Similarly, the payment of Rs.40,000/- was not made in the presence of Sub-Registrar. Though, a sum of Rs.40,000/- is alleged to have been received by the appellant-defendant out of the total sale consideration of Rs.40,000/- but there is nothing on record to suggest as to why the sale deed was not got executed and registered at that time and why the date for execution and registration of the sale deed was fixed on or before March 15, 2007. Not only this, the possession of the land was also stated to be handed over at the time of alleged agreement of sale.

Execution of the agreement of sale and the story propounded by the appellant-defendant have already been discussed at length after analyzing the evidence available on file and hearing the learned counsel for the parties by both the lower

Courts below and both the Courts have delivered the concurrent findings to the effect that the agreement of sale is fully proved whereas the defence taken or the story propounded by the appellant-defendant that it was a result of fraud was, disbelieved.

The impugned judgments and decrees are based upon the actual and factual position of all the facts and circumstances. There is nothing on the record to suggest either the misappreciation of evidence or the commission of alleged fraud by the respondent-plaintiff upon the appellant-defendant.

In view of the clear cut findings rendered by the trial Court and confirmed by the First Appellate Court, this Court does not find any substantial question of law involved in this case. As such, the judgment and decree rendered by the trial Court as well as the First Appellate Court are upheld.

In the light of what has been discussed above, instant appeal being devoid of merits is dismissed with no order as to costs.

February 23, 2015
m. sharma

(JASPAL SINGH)
JUDGE