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

RSA No.5775 of 2014 (O&M)

Date of Decision: 07.12.2015

RAM GOPAL THROUGH GPA SAROJ

.....Appellant

Vs

RAJBIR AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

- 1. *Whether Reporters of local papers may be allowed to see the judgment ?***
- 2. *To be referred to the Reporters or not ?***
- 3. *Whether the judgment should be reported in the Digest?***

RAJ MOHAN SINGH, J.(Oral)

CM-13710-C-2014

For the reasons mentioned in the application, delay of 21 days in re-fling the appeal is condoned.

Application stands disposed of.

RSA No.5775 of 2014 (O&M)

[1]. Defendant is in second appeal in a suit for specific performance.

[2]. Plaintiffs filed suit on the basis of agreement to sell dated 26.04.1999 for a total sale consideration of Rs.3,00,000/-.

An earnest amount to the tune of Rs.2,48,000/- was paid to the

defendants and target date for registration of sale deed was fixed as 23.04.2000. The target date i.e. 23.04.2000 was Sunday, therefore, plaintiffs went to the office of Sub-Registrar, Nilokheri on 24.04.2000 along with balance sale consideration. Defendants did not turn up. Plaintiffs got their presence marked before the Sub-Registrar by moving an application and also got the affidavit attested from Notary Public. Thereafter a legal notice was served upon defendants on 22.05.2000 through their Advocate.

[3]. Defendants contested the suit. Initially they were proceeded *ex parte* on 19.05.2005. The *ex parte* decree was ultimately set aside by this Court on 18.08.2010. The defendants thereafter filed written statement and took the plea of loan transaction as resultant fraud committed by the plaintiffs in obtaining agreement to sell in question.

[4]. On the basis of pleadings of the parties, following issues were framed by the trial Court:-

- “1. *Whether the defendants entered into an agreement to sell the suit property on 26.4.1999 and received a sum of Rs.2,48,000/- as earnest money from the plaintiffs? OPP*
2. *Whether the plaintiff were and still ready and willing to perform their part of contract, but defendants have failed to do so? OPP.*

3. *Whether the plaintiffs are entitled to refund of earnest money alongwith compensation as prayed for ?OPD.*
4. *Whether the suit is not maintainable in the present form? OPP.*
5. *Whether the plaintiffs have not come to the court with clean hands and have suppressed the true and material facts from this court, If so, its effect? OPD*
6. *Whether the plaintiffs have got no locus standi or cause of action to file the present suit? OPD.*
7. *Whether the present suit is alarming abuse of the process of law? OPD*
8. *Whether proper court fee has not been affixed on the plaint? OPD*
9. *Relief.”*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. Trial Court decreed the suit and the defendants remained unsuccessful in appeal before the lower Appellate Court.

[7]. I have heard learned counsel for the appellants.

[8]. Admittedly the defendants have not disputed their signatures on agreement to sell, but they alleged that their

signatures were obtained in the context of loan transaction. The agreement was not executed for the purposes of executing sale deed, rather it was a security document in view of money advanced to them as they were in dire need of money at the relevant time. They borrowed the money from their uncle Janardhan, who then obtained their signatures on the blank papers.

[9]. The agreement to sell has been proved with reference to attesting witnesses viz. PW-2 Satpal and PW-3 Prithi Raj Malhotra, Notary Public. Both the witnesses stood the lengthy cross-examination, but nothing incriminating could come out.

[10]. Both the Courts below have held that once the execution of agreement to sell is proved, normal consequences would follow in the form of decreeing the suit for specific performance unless and until exceptions are made in terms of Section 20 of Specific Relief Act.

[11]. Once the initial onus has been discharged by the plaintiffs, the onus thereafter shifts upon the defendants to prove that the agreement to sell was the result of fraud and fabrication. No evidence has been led by the defendants to prove that the agreement to sell was the result of fraud or fabrication except the self-serving statement of general power of attorney of defendant No.1 Smt. Saroj DW-2, there is no

evidence led by the defendants except one Raja Ram DW-1, who is also one of the witnesses to agreement to sell. This witness deposed only few lines in his examination-in-Chief Ex.DW-1/A, but faltered on other aspects of the case.

[12]. Both the Courts below have discarded the testimony of aforesaid witness while observing that such like deposition of the witness is quite improbable in the backdrop of the case wherein Notary Public has attested the document besides being attested by marginal witnesses.

[13]. In view of above, the finding of fact recorded by both the Courts below, in considered opinion of this Court cannot be held to be as a result of misreading of evidence or having suffered with perversity of any type. Resultantly, this appeal is dismissed.

December 07, 2015

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(RAJ MOHAN SINGH)
JUDGE