

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5823 of 2014 (O&M)

Date of Decision.21.12.2015

Sahabuddin son of Hussain

.....Appellant

Vs.

Din Mohamed son of Chandu

.....Respondent

Present: Mr. Virendra Rana, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 295 days in filing the appeal is condoned.
2. The defendant is the appellant. The suit for specific performance was laid on agreement of sale said to have been executed on 26.05.2010 by the defendant in favour of the plaintiff. The contention was that the amount of ₹2,16,000/- had been paid on the day of the agreement out of total consideration of ₹3 lacs and ₹84,000/- was to be paid on 24.05.2011. The plaintiff would contend that he presented himself before the registering officer on the date of execution, got the affidavit attested as proof of his presence and his willingness to perform his part of the contract. According to the plaintiff, the defendant did not turn up at the place and the plaintiff had, therefore, perforce to file the case for specific performance.
3. The defendant's contention was that he had only borrowed for ₹50,000/- and for security for the loan he had affixed his thumb impression on blank stamp papers which had been filled up and sought

to be enforced with fictitious recitals. The defendant would attempt to show some intrinsic factors as available in the document itself to show that this document must have been filled up subsequently. The original documents had been brought before the Court and the counsel arguing for the appellant would lay emphasis on the fact that the photograph which is affixed on the first page is thumb marked by only one person and thumb impression of yet another person is shown beneath the photograph. One of the witnesses whose name was typed was not admittedly present and another witness's name which finds a place has been written in hand and if he was present at that time his name must have been also typed and there is no particular reason given as to why his name was only hand written. It is also further contended that there was a discrepancy even with reference to the description of property.

4. The Courts below have taken the view that there was simply no justification for the defendant to affix thumb impression on the blank stamp papers and if it was merely a case of borrowing, there was no necessity for the defendant to hand over the photograph and have it affixed at that time when he affixed his thumb impressions. The affixation of the thumb impression on stamp papers itself is not denied and there was simply no merit in plea that the thumb impression had been affixed only on one photograph and thumb impression of yet another was not affixed on the photograph. The plea of repayment of the loan of ₹50,000/- was also rejected as unacceptable, for there were no details of repayment and there was also no explanation given as to why the defendant could not obtain return of the blank papers on repayment of the loan. There was further plea by the defendant not

even complaining to police or to any one if he was repaying money and the plaintiff was not prepared to hand over the blank papers.

5. The so-called discrepancy relating to the instrument of presence of one witness whose name was not typewritten but was only written by hand or his case that the thumb impression of only one of the parties was affixed only on one photo and not of the other, are too insignificant to discredit the document. Even the plea that there had been mis-description of property is not in any way founded in the pleadings and it is only argument brought by the counsel before me.

6. There is no merit in the second appeal and the case involves no substantial question of law for consideration. The second appeal is dismissed.

(K. KANNAN)
JUDGE

December 21, 2015
Pankaj*