

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

-:-

R.S.A No. 6294 of 2014 (O&M)

Decided on : January 28, 2015

Purshotam Lal

... Appellant

Versus

Trilok Chand

... Respondent

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Bikram Chaudhary, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Heard.

Challenge in this regular second appeal brought by the defeated-defendants is to judgment/decreed dated 15.07.2014, whereby learned Additional District Judge, Palwal (hereinafter referred to as the 'first appellate Court') has reversed judgment/decreed dated 15.03.2012, passed by the learned Additional Civil Judge (Senior Division), Palwal (hereinafter referred to as 'trial Court') and has decreed suit of the respondent for possession of suit land by specific performance of agreement to sell dated 31.08.2004.

It is argued by learned counsel for the appellant that the respondent has utterly failed to prove execution of agreement to sell and the property being joint a specific portion of the same could not be sold.

A perusal of the impugned judgment would show that case of the respondent before the Courts below was that the appellant had executed agreement to sell dated 31.08.2004 in his favour in respect of the land as per details given in the heading of the plaint, for a consideration of rupees four

lacs and had received from him an amount of Rs.3,72,000/- as earnest money. Balance sale consideration of Rs.28,000/- was to be paid to the defendant at the time of execution and registration of the sale deed. As per terms and conditions of the agreement, sale deed was to be executed on or before 30.08.2005. According to the case of the respondent, while he always remained ready and willing to perform his part of the agreement, the appellant did not come present for execution and registration of the sale deed on the appointed day, which forced him to approach the Court for the claimed relief.

Respondent's plea was contested by the appellant by filing a written statement wherein all the allegations, including execution of the agreement to sell and receipt of earnest money, were denied and the agreement to sell was termed as false, forged and fabricated document.

Learned trial Court formulated necessary issues.

Both the sides adduced evidence and were heard by the learned trial Court. However, learned trial Court did not agree with the plea put forth by the respondent and accordingly, his suit was dismissed vide judgment/decreed dated 15.03.2012, which as aforesaid has been reversed by the learned first appellate Court vide judgment/decreed dated 15.07.2014.

Respondent examined himself as PW-3 to prove all the contents of the plaint besides examining Hari Singh, an attesting witness of the agreement to sell dated 31.08.2014 as PW-2. All the witnesses have proved execution of the agreement and receipt of the earnest money by the appellant from the respondent amounting to Rs.3,72,000/-. Respondent has also examined handwriting and finger prints expert, namely, S.P.Singh as

PW-4 to prove that signatures appearing on agreement to sell, Exhibit P1, and receipt, Exhibit P/2, tally with the standard/admitted signatures of the appellant. The appellant, as aforesaid, has denied his signatures on the agreement and has also empathetically denied execution thereof. However, a perusal of the impugned judgment further reveals that the appellant while appearing as DW-1 has stated that he has filed no written statement and he does not know as to who is his counsel. He also denied his signatures on vakalatnama "Mark A" and his affidavit Exhibit DW-2/A which was placed on record by way of chief examination. From this conduct of the appellant, it perforce comes to the fore that the appellant is in the habit of making false denials. Even otherwise, if plea of the appellant, as put forth by him as DW-2, is taken to be correct, then his case is rendered as a case of no denial because the appellant has denied filing of the written statement and making affidavit Exhibit DW 2/A in lieu of the chief examination. From this it also comes out that the appellant has failed to substantiate his plea as put forth in the written statement. That being so, the arguments which are being raised now are not available to him.

Further, this regular second appeal is shown not to involve any question of law much less a substantial one. Resultantly, I regret my disinclination to entertain this appeal.

Appeal, therefore, fails and is dismissed.

No costs.

January 28, 2015
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[Mahavir S. Chauhan]
Judge