

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
206**

RSA No. 2742 of 2009 (O&M)

Date of Decision: 01.04.2016

Rachhpal Singh

.....APPELLANT

VERSUS

Dilbagh Singh

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. P.S.Khurana, Advocate,
for the appellant.

Mr. L.S.Sidhu, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Ferozepur dated 15.04.2008, whereby the suit for specific performance of agreement to sell dated 15.06.2002 executed by the appellant-defendant in favour of the respondent-plaintiff with regard to the land measuring 20 Kanals 6 Marlas, as detailed in the head note of the plaint, on payment of total sale consideration of ₹3,55,250/- after adjusting ₹3,23,600/- on account of earnest money received by the appellant from the respondent and for directing the appellant to do all necessary acts for the purpose of execution and registration of the sale deed with consequential relief of permanent injunction restraining the appellant from alienating the suit land, stands

decreed, wherein it was stated that the respondent-plaintiff would pay the balance consideration amount to the appellant within a period of three months from the date of passing of the decree, failing which the respondent will be entitled to get executed and registered the sale deed according to law by filing execution, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District Judge, Ferozepur on 21.11.2008.

2. It is the contention of the learned counsel for the appellant that the respondent-plaintiff has not been able to prove the due execution of the agreement to sell dated 15.06.2002. He contends that in fact, no agreement to sell was ever executed by the appellant-defendant rather he had taken a loan of ₹ 50,000/- from the respondent-plaintiff and while giving the said amount, certain blank papers were got signed from the appellant by the respondent and it is later on that these blank papers have been misused and a fraud has been played upon the appellant by converting those blank papers into an agreement to sell, which is now being misused by the respondent for filing the present suit for specific performance. His further submission is that the respondent has not deposited the remaining earnest money within the time of three months, as granted in the decree and, therefore, the decree is illegal and not executable and thus, the judgment and decree passed by the Lower Appellate Court cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for the respondent submits that apart from the plaintiff himself, who had appeared as PW2, a marginal witness of the agreement to sell, namely, Harbhajan Singh PW-1 has appeared, who had duly proved the execution of the agreement to sell. He had categorically stated that the document was executed in his presence and

prior to the appellant having affixed his signatures on the said document, the scribe had read over the said document to him and it is thereafter only that the signatures were affixed by the appellant. He contends that the onus to prove the assertion with regard to the agreement to sell being a result of a fraud has not been discharged by the appellant and, therefore, the plea of the appellant that blank papers were got signed by the appellant, cannot sustain. His further contention is that the time stipulated in the decree would not, in any case, render the decree inexecutable because in the said decree itself, it is mentioned that if it is not done, the same can be got executed by the due process of law. Prayer has, thus, been made for dismissal of the appeal.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned judgments.

5. The contention of the learned counsel for the appellant that the agreement to sell in question Ex. P1 dated 15.06.2002 has not been proved, cannot be accepted as not only the marginal witness had appeared and deposed with regard to the due execution of the agreement to sell apart from the plaintiff but he had also given the details as to how it was executed by the appellant. The findings recorded by the Courts below, on this aspect, cannot be faulted with.

6. As regards the contention of the counsel for the appellant that the agreement to sell is a piece of fraudulent document as it is a result of the misuse of the blank papers got signed from the appellant by the respondent on the pretext of and in fact, because of the loan having been taken of ₹ 50,000/- by him, the same again cannot be accepted as the due execution of the agreement to sell has been proved on record and there is no evidence to

the contrary which would prove the assertion of the appellant-defendant that the agreement to sell was a result of fraud. The Courts have rightly placed the onus upon the appellant on this question and, therefore, there being no evidence to substantiate such an assertion, the findings, as recorded by the Courts below, cannot be faulted with.

7. The contention of the counsel for the appellant that the decree has been rendered illegal and inexecutable because the respondent has not deposited the amount within the period of three months, as directed in the decree, the same also cannot be accepted as the decree is not rendered illegal even if the amount has not been deposited within a period of three months and therefore, the same cannot be said to be bad in law. The Appellate Court has rightly dealt with the said aspect by holding that it is for the Executing Court to see with regard to the said aspect. In any case, the decree is a valid decree and merely because a part of the decree has not been complied with would not render it illegal. The judgments, as passed by the Courts below, being in accordance with law do not call for any interference.

8. No other point has been raised or argued by the counsel for the parties.

9. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

10. There is no substantial question of law in the present appeal, which requires consideration of this Court.

11. In view of the above, finding no merit in the present appeal, the

same stands dismissed.

In view of the dismissal of the main appeal, all pending civil
misc. applications are also dismissed.

April 01, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE