

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

**RSA No.4356 of 2010 (O&M)
Decided on: 13.05.2016**

Amar Singh

....Appellant

Versus

Jalour Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. D.D. Sharma, Advocate for the appellant.

Ms. Anupam Sharma, Advocate for the respondent.

- 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?*

REKHA MITTAL, J.

The present appeal lays challenge to the consistent findings recorded by the Courts below whereby suit filed by the respondent/plaintiff for specific performance of agreement to sell dated 16.01.2006 for land measuring 08 kanals, detailed in Para 2 of the judgment of the trial Court was decreed vide judgment and decree dated 11.05.2009 and the findings recorded by the trial Court have been affirmed in appeal decided by the Additional District Judge, Ferozepur, vide judgment and decree dated 23.11.2009.

Counsel for the appellant/defendant has submitted that the agreement to sell propounded by the respondent/plaintiff is the result of forgery and fabrication as the same has been prepared on blank signatures of the appellant obtained at the time when he availed a loan of Rs.40,000/- from one Vaisakha Ram, one of the attesting witnesses of the agreement in question. It is further argued that there are cuttings

in the agreement Ex.P-1 that renders the document inadmissible in evidence, therefore, the Courts below have committed a gross error in exercise of discretion in favour of the respondent in allowing specific performance of the agreement. Another submission made by counsel is that as the respondent/plaintiff has made a prayer in the alternative for refund of the amount allegedly paid under the agreement, it would be in the fitness of things if the judgments and decrees passed by the Courts below are modified and the respondent/plaintiff is allowed alternative relief and the appellant is ready to refund the amount with interest to be ascertained by this Court.

Counsel for the respondent/plaintiff, on the contrary, has supported the judgments passed by the Courts below with the submission that consistent findings recorded by the Courts based upon voluminous oral and documentary evidence cannot be interfered with in exercise of jurisdiction under Section 100 CPC. Further dilating, it is urged that the appellant/defendant failed to adduce any satisfactory much less tangible and cogent evidence to prove that the agreement in question is the result of forgery and fabrication. In addition, it is submitted that as the appellant has admitted his signatures on the agreement to sell, there was a heavy onus to be discharged by him that the document is liable to be rejected. The last submission made by counsel is that neither the Courts below have committed any error nor any question of law much less a substantial one arises for adjudication.

I have heard counsel for the parties, perused the paperbook and the original record of the trial Court.

As has been rightly argued by counsel for the respondent/plaintiff, consistent findings recorded by the Courts below can be intervened only if the same are found to be perverse. The contention raised by counsel for the appellant that there are cuttings in the agreement to sell Ex.P-1 and makes it inadmissible is misconceived as the cuttings have been duly attested by the appellant/defendant.

So far as the contention with regard to grant of alternative relief of recovery along with interest, as per the settled position in law, in case the agreement to sell has been proved in accordance with law and there is nothing lacking on the part of the proposed vendee in performing his part of the agreement, there is no reason for the Court to deny the relief of specific performance of the agreement. Counsel for the appellant is not in a position to point out any such circumstances pleaded or proved that negates plea of the respondent/plaintiff to seek specific performance of the agreement when otherwise, the present case does not fall within the purview of Section 20 of the Specific Relief Act. That being so, I find myself unable to accept submissions of counsel for the appellant that the respondent/plaintiff should be allowed alternative relief of recovery by way of modification of the judgments passed by the Courts below.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

13.05.2016

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(REKHA MITTAL)
JUDGE