

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

RSA No.207 of 2012 (O&M)

Date of decision : 05.08.2016

Didar Singh

...Appellant

Versus

Bakhshish Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. G.S. Nagra, Advocate for the appellant.

Mr. K.S. Cheema, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 13.07.2000 in respect of land measuring 6 kanals 10 marlas against the total sale consideration agreed to be sold for ₹2,45,000/- against the payment of earnest money of ₹1,50,000/-, has been decreed by setting aside the judgment and decree of the trial Court, whereby suit aforementioned has been dismissed.

Mr. Nagra, learned counsel appearing on behalf of appellant-

defendant has raised following multi-fold arguments in support of his grounds of appeal:-

1. The respondent-plaintiff has failed to prove the payment of earnest money of ₹1,50,000/-.
2. Plaintiff admitted in cross-examination that he did not sell land.
3. Lambardar was of different village.
4. There was earlier agreement dated 27.01.1999 which was cancelled on 29.11.1999 and general power of attorney was also given which was cancelled and, therefore, it was an outcome of the fraud as this fact in particular was not pleaded.
5. There was no need of executing the agreement to sell in the office of Tehsildar.
6. None of the witnesses have deposed that a sum of ₹1,50,000/- was paid.

All these facts were noticed by the trial Court and dismissed the suit, but lower Appellate Court has committed illegality and perversity in misreading and misconstruing the aforementioned facts and thus urges this Court for setting aside of the judgment and decree under challenge.

Mr. Cheema, learned counsel appearing on behalf of respondent-plaintiff submits that defence taken in the written statement is an afterthought as preceding to the filing of the suit dated 07.08.2002, legal notice dated 27.09.2001 was sent vide registered post. It carries presumption of truth as per Section 27 of the General Clauses and same has not been rebutted or denied. The appellant-defendant has failed to prove the signatures on the agreement to sell, in essence, has not taken the help of an

expert or any other circumstance to show that how his signatures appeared on the agreement to sell. PW1 Scribe Jagjit Singh, much less, PW3 attesting witnesses both have proved the payment of earnest money, thus, urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Nagra, Advocate. Defendant was failed to lead any corroborative evidence, much less, evidence to dispel the signature on the agreement to sell, rather in the cross-examination of the PW3 and PW1, specific question was put with regard to payment of earnest money and both the witnesses have answered in affirmative.

This aforementioned observation of mine are upheld after perusal of the statement of aforementioned witnesses from the record of the Lower Court. The submission of Mr. Nagra, is not able to cut an ice with regard to the payment of the earnest money. The execution of the agreement to sell in the office of Sub-Registrar is an over cautious act. Any sane person when confronted with the agreement to sell actually not executed would certainly feel cheated and take suitable action in accordance with law by lodging the complaint or otherwise and this fact was disclosed to the defendants prior to the filing of the suit, through, legal notice. All these facts have been noticed by the lower Appellate Court while exercising the discretion. I am of the view that respondent-plaintiff has been found to be always ready and willing and rightly so, the discretion as noticed above has been exercised.

I do not find any illegality and perversity, much less, no

substantial questions of law arises for determination.

Appeal stands dismissed.

05.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No