

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

RSA No.5046 of 2011 (O&M)

Date of decision : 15.07.2016

Dalu Ram

...Appellant

Versus

Badlu Ram

...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. Harkesh Manuja, Advocate for the appellant.

Mr. Amardeep Sheoran, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

This is an appeal at the instance of the appellant whose suit seeking specific performance of the agreement to sell dated 30.04.2001 has been dismissed by both the Courts below.

Mr. Harkesh Manuja, learned counsel appearing on behalf of appellant-plaintiff submits that an agreement to sell, aforementioned, in respect of land measuring 23 kanals 0 marla for total sale consideration of ₹1,80,000/- against the payment of ₹80,000/- as earnest money was entered into. Parties are none else but the real brothers. The stipulated date for registration and execution of the sale deed is 30.08.2004. Courts below have declined the discretionary relief, much less, alternative relief on the ground that there is overwriting with regard to the stipulated date as instead of

30.08.2001 in the agreement to sell, it has been mentioned as 30.08.2004. He submits that an application for summoning and cross-examination of the witness had been filed, which was allowed but the said witness failed to appear for the cross-examination. The Court could not have taken into consideration the examination-in-chief as the appellant-plaintiff has been deprived of the cross-examination, and thus, urges this Court for formulation of the substantial question of law. All these facts leads to irresistible conclusion that the alternative relief ought to have been granted as the thumb impression on the agreement to sell has not been disproved.

Mr. Amardeep Sheoran, learned counsel appearing on behalf of respondent submits that plaintiff witnesses have not supported the case as alleged Deed Writer PW2 in cross-examination submitted, that he is neither scribe the agreement to sell nor any stamp paper was issued by him or brought to him. Registry Clerk PW1 also feigned ignorance as he was, at relevant point of time not employed in the office of Registrar. Phool Singh PW3 has not supported the case of the plaintiff, thus, plaintiff failed to prove the contents of the agreement to sell, much less, payment of the earnest money, rightly so, discretionary relief has been declined and thus urges this Court for affirming of the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the paper book and of the view that findings rendered by both the Courts below are perfect, legal and justified as all the three witnesses have not supported the case of the appellant-plaintiff. PW2 Deed Writer in cross-examination spilled the beans by saying that neither he is scribe of the agreement to sell

nor any stamp paper was produced to him. Registry Clerk regarding the affidavit of appearance before the Registrar on 30.08.2004 also did not support the case of the plaintiff.

In my view, the appellant-plaintiff has failed to prove the agreement to sell. The reasoning of availability of his thumb impression on the stamp paper was that he had thumb marked on the blank stamp paper for obtaining debit card.

Learned counsel for the defendant during the course of arguments submits that FIR in this regard was filed and defendant-accused has been convicted but Mr. Harkesh Manuja, Advocate feigned ignorance.

Mr. Manuja, Advocate has relied upon the cross-examination of Vendor to contend that agreement to sell was admitted and claim was settled to ₹80,000/- and has referred to Annexure P-1 annexed with the Regular Second Appeal. I have gone through the cross-examination and of the view that admission of the agreement to sell simultaneously explained the outcome of the fraud.

He further submits that earnest money was given. In my view, entire cross-examination has to be seen and not few lines in isolation.

In my view, plaintiff has miserably failed to prove the case, much less, no substantial questions of law arises for determination by this Court.

Dismissed.

15.07.2016

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**(AMIT RAWAL)
JUDGE**