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

RSA-910-2012

Date of decision : 12.01.2016

Ajit Singh

...Appellant

Versus

Gurtar Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.C. Chhabra, Advocate
for the appellant.

Mr. K.R. Dhawan, 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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is in regular second appeal against the concurrent finding of the fact whereby the suit for specific performance of the agreement to sell dated 27.11.2004, has been decreed and appellant-defendant has been called upon to register the sale deed on receipt of the balance sale consideration.

Mr. S.C. Chhabra, learned counsel appearing on behalf of the appellant-defendant submits that a categorical stand in the written statement had been taken that the agreement is outcome of the fraud, as the defendant stood surety in respect of a co-

villager and the respondent-plaintiff is a commission agent. During the course of hearing, he has shown the copy of the agreement consisting of four stamp papers, two of ₹ 100/- and other two of ₹ 50/- and as well the order dated 30.05.2012 passed by this Court which reads thus:-

"Present: Mr. S.C. Chhabra, Advocate for the appellant.

With the assistance of counsel for the appellant, I have gone through the contents of the sale deed on the basis of which the suit of the plaintiff-respondent for specific performance has been decreed. The position of the thumb marks and the contents of the documents indicating that the possession of the portion of the property in dispute was transferred to the plaintiff, apparently make the document suspicious. Besides, this Section 17-A of the Registration Act requires such a document to be registered before it is accepted in evidence.

Notice of motion for 15.11.2012.

Meanwhile, execution of the decree will remain stayed.

May 30, 2012

*(M.M.S. Bedi)
Judge"*

He further submits that even the possession referred in the agreement to sell has not been handed over to the respondent-plaintiff and by way of additional evidence i.e. Khasra

Girdawari, proves and shows the possession of the appellant-defendant. Both the Courts below have not seen the format/pattern of typing of the agreement to sell. Had it been so, perhaps the discretionary relief under Section 20 of the Specific Relief Act, could not have been granted.

Thus, the following substantial question of law arises for determination of this Court:

Whether the judgment and decree of both the Courts below amounts to perversity as there has been a misreading and misappreciation of the agreement to sell Ex.P1.

Mr. K.R. Dhawan, learned counsel appearing on behalf of the respondent-plaintiff submits that the attesting witnesses of the agreement of sell have deposed in terms of averments, made in the plaint, much less, even, the respondent-plaintiff has also deposed in the same manner. The plea of the possession cannot be taken for the first time in regular second appeal as no such defence has been taken in the written statement, thus, now an attempt has been made to fill up the lacuna in the evidence which should not be permitted. Thumb impressions though have been admitted, but the appellant-defendant failed to discharge the onus as per provision of Order 6 Rule 4, rightly so, the suit has been decreed.

I have heard learned counsel for the parties and appraised the paper book.

The four leafs of stamp papers would reveal that the

thumb impressions of the appellant-defendant are varying and not consistent at one position of every stamp paper. The thumb marks are varying at one page has been appended after the writing of two lines and at some paper, after four and five lines, thus, an irresistible conclusion is drawn that the blank signed papers have been converted into agreement to sell, for, there is no separate receipt of payment of the earnest money of ₹ 3,12,500/-. The aforesaid aspect of the matter totally escaped the notice of the Courts below while exercising the discretion. The focus of the Court was on the testimony of the attesting witnesses, there is another point of determination that the respondent-plaintiff has also not examined the stamp vendor where from the alleged stamp papers were issued nor his register.

The aforementioned facts are sufficient to believe and rely upon the stand the appellant-defendant had not entered into agreement in respect of land measuring 16 kanals and paid the payment of ₹ 5,00,000/-.

Keeping in view the aforementioned observations, substantial question of law noticed above is liable to be answered in favour of the appellant-defendant, ordered accordingly, and against the respondent-plaintiff. The impugned judgment and decree of the courts below is set aside and resultantly the suit is dismissed.

The appeal stands allowed.

12.01.2016
yogesh

(AMIT RAWAL)
JUDGE