

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

RSA-116 of 2016 (O&M)

Date of decision: 30.03.2016

Dara Singh

...Appellant

Versus

Balwant Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Maninder Arora, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for specific performance of agreement to sell dated 18.11.1998/24.05.2010 filed by the plaintiff/respondent (for short 'the respondent') was decreed by the trial Court, vide judgment and decree dated 25.05.2015.

2. Aggrieved against the findings of trial Court, the defendant/appellant (for brevity 'the appellant') filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 25.05.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral

as well as documentary evidence on record, hence, the instant appeal has been filed by the defendant/appellant.

4. On behalf of the appellant, it is contended that the alleged agreements to sell dated 18.11.1998, Ex.P1 and 24.05.2010, Ex.P2, were never executed by the appellant. The marginal witnesses of the agreements to sell are brothers of the respondent. Both the agreements were scribed by Bachan Singh, an independent witness, who has not been examined to prove the agreements to sell. The learned counsel further submits that as per the claim of the respondent, the appellant had received Rs.1,95,000/- in advance, however, no such receipt was brought on record. However, both the Courts below have erred in not appreciating the above material facts on record.

5. Heard, the learned counsel for the appellant.

6. It is admitted fact that Darshan Singh was the original owner of the property in dispute. The onus to prove his claim was on the plaintiff who in support thereto had placed on record original agreements to sell dated 18.11.1998 Ex. P1 and 24.05.2010, Ex.P2, whereas the appellant had taken the plea that the said agreements to sell were never executed by him and the same, if any, are forged documents. However, no document has been brought on record by the defendant to show that the

agreements to sell Ex.P1 and Ex.P2 are forged and fabricated documents. The respondent had alleged that he was ready and willing to execute the sale deed and he remained present in the office of Sub Registrar but the appellant failed to perform his part of contract. The appellant in his testimony had admitted that Ex.P2 bears his photograph at point Mark 'A'. He further stated that at point 'B' there is a thumb impression but he denied that it is his thumb impression. Since Dara Singh (appellant) had sold the suit land to Jasbir Kaur, who further sold it to the wife of plaintiff, namely, Gurmit Kaur as well as Daljit Kaur, wife of Jaswant Singh, brother of the plaintiff, therefore, the learned trial Court has rightly decreed the suit for recovery in favour of the respondent instead of grant of relief of specific performance.

7. Thus, in view of above facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There is no scope to interfere in the well reasoned judgments and decrees passed by the Courts below. As such, the present appeal fails and the same is hereby dismissed.

30.03.2016

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(JITENDRA CHAUHAN)
JUDGE