

**C.M.No.12423-C of 2016 in/and
RSA No.3505 of 2013 (O&M)**

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

**C.M.No.12423-C of 2016 in/and
RSA No.3505 of 2013 (O&M)
Date of decision:05.10.2016**

Suba Singh

... Appellant

Vs.

Gurmej Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harminderjeet Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.12423-C of 2016

For the reasons stated in the application duly supported by an affidavit, the order dated 06.09.2016 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

RSA No.3505 of 2013 (O&M)

C.M.No.9441-C of 2013

For the reasons stated in the application, duly supported by an affidavit, delay of 77 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.9442-C-2013

Deficiency of the court fees has been made good.

C.M. stands disposed of.

Main Case

Appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, suit seeking specific performance of the agreement to sell dated 13.11.2002 in respect of suit land, has been decreed by both the Courts below.

Mr. Harminderjeet Singh, learned counsel appearing on behalf of the appellant-defendant submits that a specific stand taken in the written statement was that the defendant had never intended to enter into an agreement to sell. The blank stamp papers were thumb-marked for the purpose of obtaining the loan and the document was obtained for the purpose of security. The attesting witness, PW2 – Gurjant Singh was 10+2 student, who is none-else but son of the plaintiff. In fact, the agreement to sell has not been proved on record, much less readiness and willingness. The appellant being an illiterate person did not know the implicacy of law, whereas, the plaintiff was a Commission Agent to whom the appellant had been selling the agricultural produce and thus, urges this Court for setting aside the findings under challenge.

I have heard learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below.

PW3 - Baldev Singh, Scribe has proved the writing of the agreement to sell. I have seen the record of the trial Court, much less, the agreement to sell. The manner and style of writing the agreement to sell remotely does not create suspicion that the blank stamp papers had been

converted as the thumb impressions are situated at proper place where it should have been. The defendant had not been able to prove how the thumb impressions on the blank stamp papers have been used. Even the factum of Commission Agent has not been proved on record. In many cases, when a person enters into agreement to sell resiles by taking up a plea of loan liability. If it was so, he/she is required to lead the evidence with regard to discharge the onus of loan liability and fails to do so. Instant case is a such kind of case. In the absence of the same, it leads to an irresistible conclusion that the parties had intended to enter into an agreement to sell. The total sale consideration was ₹4,10,000/- which is stated to have been paid. The target date was 01.06.2003 and the suit with promptitude was filed on 14.06.2003, in essence, respondent had already been found to be ready and willing to perform his part of the contract and therefore, the Courts below rightly exercised the discretion under Section 20 of the Specific Relief Act.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

October 05, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No