

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

**RSA No.1260 of 2016 (O&M)
Date of decision:29.03.2016**

Jagdeep Ghai (since deceased) through LRs ... Appellant

Vs.

Ajaib 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. B. B. Bagga, Advocate
for the appellant.

Mr. P.L.Singla, Advocate
for the caveator/respondent.

AMIT RAWAL J. (Oral)

Appellants, LR's of defendant No.1- Jagdeep Ghai, are aggrieved of the concurrent findings of facts and law, whereby, suit for specific performance of the agreement to sell, has been decreed.

Mr. B. B. Bagga, learned counsel appearing on behalf of the appellant/defendants has raised multi-fold arguments which are enumerated herein-below:-

- i) In the alternative, in the suit for recovery, total amount has been claimed and therefore, both the Courts below

should not have exercised the discretion under Section 20 of the Specific Relief Act.

ii) In view of Section 14 of the Specific Relief Act, no discretionary relief can be granted as the property stood in the name of Jagdeep Ghai.

iii) No hardship would be caused in case the judgments and decrees are upheld and the sale deed of the property, much less, possession has been handed over to the respondent-plaintiff. Handwriting expert has unequivocally stated that signatures/thumb impressions of the vendor were smudged. In view of such evidence, Court below exercised the discretion in decreeing the suit.

Mr. P.L. Singla, learned counsel appearing on behalf of the respondent-plaintiff submits that factum of interest of other legal heir of Jagdeep Ghai has been taken care of, but he has no interest. At the best, he can claim the share in the total consideration of the property. The appellant-defendant has failed to prove the factum of fraud. There is no criminal action initiated against them. The plaintiff had been ready and willing to perform his part of the contract. Both the Courts below concurrently exercised the discretion which should not be interfered while exercising the power under Section 100 of the Code of Civil Procedure.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below

and of the view that there is no merit in the submission of Mr. Bagga, for the reasons that as per Section 23 of the Specific Relief Act, when the agreement to sell envisages the liquidated damages, it would not bar the parties to claim damages only. The total sale consideration was ₹10,00,000/- and earnest money was ₹6,00,000/-. A sum of ₹50,000/- has been received on 15.4.2008. On bare perusal of the agreement to sell and receipt, it is evident that vendor had put signatures, as well as thumb impressions. This Court had an occasion to examine the same. There is no smudging of the thumb impression/signatures, thus, the report of expert is not acceptable, much less, tenable. It has now become the practice that expert, toe to the lines of the party who engages him. The target date for execution and registration of the sale deed was 23.10.2006 which was extended upto 15.4.2008, whereas, suit has been filed on 21.07.2008. The respondent-plaintiff proved the readiness and willingness, much less, receipt of earnest money and another amount of ₹50,000/- against valid receipt. No factors have been pleaded owing to the act of the respondent-plaintiff after execution of the agreement to sell which resulted into hardship.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, 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

March 29, 2016
savita