

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

RSA No.203 of 2016 (O&M)

Date of decision:20.01.2016

Bishna Ram (deceased) through LRs ... Appellant

Vs.

Suresh Pal ... 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. Gaurav Sethi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.659-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 61 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.203 of 2016 (O&M)

The appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, suit for specific performance of the agreement to sell dated 24.02.2007, has been decreed and he has been called upon to execute and register the sale deed on receipt of balance sale consideration.

Mr. Gaurav Sethi, learned counsel for the appellant-defendant submits that agreement to sell aforementioned, has not

been proved. It was a loan transaction and this fact has been proved through Ex.D1 to Ex.D-4. It was pleaded that the plaintiff had obtained the signatures/thumb impressions on the blank stamp papers and later on converted the same into agreement to sell. He further submits that scribe of the agreement to sell has not been examined. Had it been so, truth would have surfaced. The property agreed to be sold is only residential house, therefore, undue hardship would be caused, thus, both the Courts below erred in exercising the jurisdiction under Section 20 of the Specific Relief Act, 1963. He further submits that appeal involves substantial questions of law to be determined by this Court. In support of his aforementioned contention, he relied upon the judgment of this Court passed in **RSA No.256 of 2013 titled as Subhash Chander and others vs. M/s Active Promoters Pvt. Ltd. decided on 03.03.2014**, wherein, this Court, in the absence of examination of scribe, held that agreement to sell was surrounded by suspicious circumstances and dis-believed the agreement.

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

There is no reference to the previous execution of the loan transaction which was sought to be led for the first time in the cross examination, though the aforementioned evidence has rightly been discarded. Both the witnesses, PW1- Khushwinder Pal and PW2 - Ram Swaroop have proved the execution of the agreement to

sell. No suggestion vis-a-vis earnest money of ₹1,50,000/- against the total sale consideration of ₹3.5 lacs has been put to the aforementioned witnesses. As regard undue hardship, no evidence has been led that showing any subsequent act of the plaintiff so as to fall the lis within Explanation No.II of the Specific Relief Act 1963 Act. As per the findings rendered by both the Courts below, in Subhash Chander's case (supra), there was an apparent spacing between lines on the blank stamp papers which were used. It is in these circumstances, the Court formed an opinion that cross-examination of scribe is essential to form an opinion whether the vendor in that case, who, was 90 years old is actually executed an agreement to sell and this fact is totally converse in the present case, whereas such is not the position in the present case.

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

January 20, 2016
savita