

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

RSA No.3825 of 2016 (O&M)

Date of decision : 17.11.2016

Smt. Karnail Kaur (since deceased through her LRs)

...Appellant

Versus

Amit Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rajbir Singh Guron, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.9943-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 44 days in refilling the appeal is condoned.

Application is allowed.

Main case

Appellant-defendants is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby in a suit seeking specific performance of the agreement to sell dated 19.07.2003, respondent-plaintiff has been held entitled to alternative relief of refund of earnest money of ₹1,20,000/- along with interest at the rate of 9% p.a. from the date of making of payments to defendant No.1 till the filing of the suit and

pendente lite and future interest at the rate of 6% p.a. on the principal amount till realization of the same.

Mr. Rajbir Singh Guron, learned counsel appearing on behalf of appellant-defendants submits that agreement to sell, aforementioned, was specifically denied. In fact the respondent-plaintiff is none else but the Property Dealer. Agreement was not on a proper form and was invalid under the Stamp Act. Even blanks are not filled properly. No earnest money has been received by the appellant-defendant No.1 from the plaintiff. On cursory glance of the receipts, it is evident that blank thumb impression paper has been used as receipt as this fact was taken care by trial Court while dismissing the suit, however, lower Appellate Court being Court of fact and law, on misconstrual of the oral and documentary evidence, has decreed the suit as noticed above. Judgment and decree is liable to be set aside as there is a interpolation in the receipt, much less, even in the agreement, therefore, adverse inference is liable to be drawn against the plaintiff. Plaintiff has miserably failed to prove the readiness and willingness, much less, execution of the agreement and, therefore, was not entitled to grant of alternative relief.

I have heard learned counsel for appellant and appraised the paper book and of the view that denial of thumb impression on the receipt has not been proved. A sum of ₹1,20,000/- is not written in numerical form and thus, apparently on the examining of the receipt, there does not appear to be any interpolation as thumb impressions are much below the writing of the receipt. The factum of the denial of the thumb impression on the receipt has not been proved. Had it been so, though not admitting, he would having

been running from pillar to post to lodge the complaint against alleged Interpolator or regarding the mischief/cheating, much less, under Sections 467 and 468 IPC. Having failed to discharge the onus, the presumption is liable to be drawn in favour of plaintiff. The lower Appellate Court have rightly held that plaintiffs were ready and willing to perform their part of agreement to sell.

I do not intend to differ with the findings rendered by the lower Appellate Court.

No ground for interference is made out, much less, no substantial question of law arises for determination.

Accordingly, present appeal is dismissed.

17.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No