

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3571 of 2015 (O&M)

Date of Decision: December 01, 2016

Sukhwinder Kaur

...Appellant

Versus

Ranjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.H.P.S.Ghuman, Advocate,
for the appellant.

Mr.Jimmy Singla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings, whereby the suit seeking specific performance of the agreement to sell dated 2.9.2009 in respect of land measuring 51 kanals 3 marlas, agreed to be sold @ of ₹15,25,000/- per acre for a total price of ₹97,50,468/- against the payment of earnest money of ₹15.00+15.00=30.00 lacs, has been decreed.

Mr.H.P.S.Ghuman, learned counsel for the appellant-defendant submits that the respondent-plaintiff has miserably failed to prove the payment of the earnest money of ₹30.00 lacs as no bank record or any direct or cogent evidence has been led. The attesting witnesses are none else but the witnesses of the plaintiff. Even the readiness and willingness was conspicuously wanting. Registration Clerk has come forward to depose about marking the presence on particularly date and not the register. The affidavit does not disclose about the registration charges, but only of the balance amount. The property, agreed to be sold, is situated at Village

Chhajli, whereas the agreement to sell has been executed at a different place. All these factors have been ignored by the Courts below. The expert always toes to the lines of his client, who engages him, and, therefore, cannot be looked into. He further submits that one of the witnesses of the plaintiff said that the agreement to sell was written on one page, though it is on three pages.

Mr.Jimmy Singla, learned counsel for the respondent-plaintiff submits that PW-3 has categorically stated that the agreement to sell was written on three pages, i.e., one stamp paper of denomination of ₹1000/- and two stamp papers of denomination of ₹500/- each. The agreement to sell also bears a separate receipt of ₹15.00 lacs, which has been proved through the testimony of the expert. The defendant has not examined any expert to belie the thumb impression. There is complete denial and, therefore, the readiness and willingness cannot be taken into consideration in view of the ratio decidendi culled out in **Sita Ram and Ors. Versus Radhay Shyam, 2007 (4) R.C.R. (Civil) 533**. The concurrent findings cannot be interfered with until and unless there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no illegality and perversity in the findings rendered by both the Courts below, much less no force in the submission of Mr.Ghuman, for, the sale deed was to be executed on or before 15.5.2010. PW-3 Vazir Khan and PW-4 Megh Raj have proved the same. Even the original writing dated 18.11.2009 (Ex.P3) at the back of the agreement to sell has been proved. The application dated 13.5.2010 (Ex.P5), original affidavit of the same date (Ex.P6), and as well as the application qua attendance dated 17.5.2010 (Ex.P7) have also been proved.

The appellant-defendant has also not taken the steps to belie his signatures on the agreement to sell by taking the assistance/aid of any expert. Plea of readiness and willingness cannot be looked into in the absence of the compliance, yet the Court cannot remain oblivious of the fact whether the respondent-plaintiff has been always ready and willing to perform his part. In this case after the extended date, the suit was filed with promptitude on 27.5.2010 and the last extension was on 16.5.2010, thus, there was no casualness on the part of the respondent-plaintiff in seeking vindication of the grievance, much less discretionary relief. Even PW-2 has also, to a question in the cross-examination, deposed that the agreement to sell was on three pages, thus, there is no force in the submission of Mr.Ghuman and the same is repelled. Anil Kumar Stamp-vendor PW-8 has also deposed that he had sold stamp papers to Smt.Sukhwinder Kaur, which was entered in the register. The attesting witnesses have deposed about execution of the agreement to sell, whereas the appellant-defendant has failed to lead any cogent and direct evidence.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence. No case for interference is made out.

Appeal stands dismissed.

December 01, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No