

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

RSA No.4475 of 2015 (O&M)

Date of decision : 16.08.2016

Raghubir and others

...Appellants

Versus

Manoj Kumar and others

...Respondents

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. Vinod S. Bhardwaj, Advocate for the appellants.

Mr. Nipun Vashist, Advocate for Caveator.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby suit seeking specific performance of the agreement to sell dated 13.09.2008 in respect of land measuring 8 kanals 0 marlas i.e. 160/2549th share in the property measuring 127 kanals 1 marlas agreed to be sold for total sale consideration of ₹6,00,000/- against the payment of earnest money of ₹1,70,000/-, has been decreed by both the Courts below.

Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of appellants-defendants submits that factum of agreement to sell was emphatically denied. The respondent-plaintiff failed to prove the same. In

fact, it was a loan transaction as defendants were working in wine shop of the plaintiff and certain admitted signatures have been used on the agreement to sell, in essence, respondent-plaintiff has not been able to prove the readiness and willingness and, therefore, could not have granted the discretion. At the best, it should have been treated for the refund of the earnest money, though, agreement aforementioned as stated above was emphatically denied. Witnesses were also not known to the defendants as they are of different villages. The statement of the witnesses has not been coherent and consistent. This fact has not been noticed by the Courts below and thus, there is illegality and perversity.

I have heard learned counsel for the appellants-defendants and appraised the paper book and of the view that there is no substance and merit in the submission of Mr. Vinod S. Bhardwaj, for, if at all there was no truth in assertion made in the plaint, suit was preceded by legal notice dated 17.06.2009, it could have been rebutted by taking action in accordance with law. The defence taken in the written statement is an afterthought. In my view respondent-plaintiff had been found to be always been ready and willing to perform by sending the notice and marking a presence on stipulated date i.e. on 15.09.2009 whereas suit has been filed on 29.09.2009. The Handwriting Expert has also proved the signatures/thumb impressions of the defendants whereas there is no averments or evidence contrary to the same. Except the statement of one defendant DW1 Inder, DW2 Hanuman, DW3 Dharambir, and DW4 Inder Singh, in my view the appellants-defendants have failed to dispel the signatures/thumb impression on the agreement to sell, much less, payment of earnest money. In my view both

the Courts below have rightly exercised the discretion being falling under the provision of 16(c) of Specific Relief, Act, 1963.

For the foregoing reasons, no ground for interference is made out, much less, no substantial questions of law arises for determination.

Dismissed.

16.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No