

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

R.S.A.No.2967 of 2014 (O&M)

Date of Decision: October 21st, 2016

Sewa Singh

...Appellant

Versus

Satish Kumar

...Respondent

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

Present: Mr.S.S.Sodhi, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings, whereby the suit seeking specific performance of the agreement to sell dated 12.9.2006 in respect of land measuring 15 kanals 14 marlas qua the share as described in the suit agreed to be sold at the rate of ₹7,25,000/- per acre against the receipt of ₹10.00 lacs as earnest money, has been decreed.

Mr.S.S.Sodhi, learned counsel for the appellant-defendant submits that no agreement to sell was executed by the appellant-defendant. The thumb impression on the left hand side had not been proved by the respondent-plaintiff. In fact, the agreement to sell required registration. He further submits that the payment of ₹10.00 lacs has also not been proved. The onus was upon the respondent-plaintiff to prove the thumb impression, but having failed to do so, the Court below ought not to have exercised the discretion. The thumb impressions on the left hand side and the other stamp papers do not prove that the parties have intended to sell the property. It

was with regard to the some loan transaction and there was emphatical denial of same in the written statement. All these facts have not been noticed and appreciated and, thus, there is illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the agreement to sell does not require registration in view of the proviso to Section 49 of the Registration Act. There is a specific recital regarding the payment of ₹10.00 lacs in the presence of the attesting witness Joginder Singh.

In my view, the respondent-plaintiff had proved the execution of the agreement to sell (Ex.P1). The readiness and willingness has also been proved by marking the presence on 15.1.2007, i.e., the target date vide Ex.P2. Even preceding to filing of the suit, legal notice Ex.P5 was also sent, but he refused to receive the same. Had there been any truth in the assertion, nothing prevented the appellant to rebut the same on receipt of the legal notice. All the averments taken in the written statement is an act of afterthought. Concurrent findings cannot be interfered with until and unless there is gross illegality, which has not been pointed out by the appellant-defendant either in the grounds of appeal or during the course of the hearing.

For the foregoing reasons, I do not intend to differ with the concurrent findings which are based on appreciation of oral and documentary evidence. No ground for interference is made out.

Appeal stands dismissed.

October 21st, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No