

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

RSA No.848 of 2016(O&M)

Date of decision:13.5.2016

Ram Lal

....Appellant

VERSUS

Ram Pal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajesh K. Moudgil, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by the respondent for specific performance of the agreement to sell dated 05.05.2005 and grant of permanent injunction against alienation of the suit property or dispossession of the plaintiff from the suit property illegally or forcibly was decreed by the learned trial Court and the findings recorded by the trial Court have been affirmed in appeal by the Additional District Judge, Panchkula.

Ram Pal, respondent/plaintiff, staked his claim to the suit property on the premise that the appellant/defendant agreed to sell land measuring 3 biswas and house existing thereon for a sale consideration of Rs.3,20,000/- vide agreement of sale dated 05.05.2005. At the time of agreement, the defendant received the

entire sale consideration in cash. The defendant also executed Will in favour of the plaintiff duly registered in the office of Sub Registrar Kalka, at Vasika No.21 dated 05.05.2005. He handed over possession of the suit property to the plaintiff on 05.05.2005. The plaintiff called the defendant through legal notice dated 23.07.2005 to come present before the Sub Registrar Kalka to execute the sale deed of property in question on the date fixed i.e. 15.09.2005 but the defendant despite receipt of notice, failed to reach there and perform his part of the agreement. It has further been averred that the respondent/plaintiff always remained ready and willing to perform his part of the agreement.

The appellant/defendant filed the written statement seriously contesting claim of the plaintiff with regard to execution of the agreement to sell, receipt of sale consideration and his liability to execute the sale deed in favour of the plaintiff. It has been pleaded that the plaintiff was residing at Model Town Nalagarh and the said house was sold by him when he was allotted a house by the Hindustan Machine Tools (HMT). At the time of shifting to HMT, the plaintiff requested the defendant for keeping some household items of the plaintiff in the house of the defendant and the said request was acceded to by the defendant. At the time of giving loan of Rs.32000/-, the plaintiff obtained all the original papers from the defendant in order to secure his loan. He has already paid the entire loan amount along with interest to the plaintiff in last week of June, 2005, and requested him to return the original papers and the papers which were

got signed by the plaintiff from the defendant but the plaintiff did not return the documents rather filed the present false and frivolous suit. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

On a thoughtful and thorough consideration of the rival submissions made by counsel for the parties in the light of materials on record, the learned trial Court accepted plea of the respondent/plaintiff in regard to agreement to sell having been executed by the defendant/appellant and further his entitlement to specific performance of the agreement in question. As a result, suit of the plaintiff was decreed with a direction to the defendant to execute the sale deed of the property within a period of two months from the date of having the certified copy of the order, failing which the plaintiff was left at liberty to get the sale deed executed through process of the Court. As has been noticed hereinbefore, the appeal preferred by the appellant/defendant did not find favour with the first Appellate Court and the findings recorded by the trial Court were affirmed without any variance.

Still feeling dissatisfied, the matter has been carried in appeal before this Court.

Counsel for the appellant has assailed the judgments passed by the Courts below primarily on three counts. The first submission made by counsel is that agreement to sell dated 05.05.2005 is inadmissible in evidence for want of sufficient stamp. In support of his contention, he has referred to judgments of Hon'ble

The Supreme Court of India Omprakash Vs. Laxminarayan and others, 2013(4) R.C.R. (Civil) 747 and Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, 2009(1) R.C.R. (Civil) 615.

The second submission made by counsel is that the agreement to sell has not been proved in accordance with law as none of the attesting witness of the agreement has been examined. In the alternative, it is submitted that in case the findings recorded by the Courts below in regard to agreement to sell are affirmed, the respondent may be allowed alternative relief of recovery along with interest to be ascertained by this Court, in view of the circumstances that specific performance of the agreement would cause undue hardship to the appellant as house in question is the only residential house with the appellant and his family consisting of his wife and three minor children.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts below.

Counsel for the appellant has sought to assail admissibility of the agreement to sell for want of sufficient stamp, in view of the provisions of the Indian Stamp Act, 1899 (in short 'Stamp Act'). Section 35 of the Stamp Act makes instruments not duly stamped inadmissible in evidence. In Omprakash's case (supra), relied upon by counsel for the appellant, it has been held that an instrument not duly stamped shall be admitted in evidence on payment of duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up

such duty together with penalty. There is nothing on record suggestive of the fact that at the time of admitting agreement to sell in evidence and marking an exhibit thereon, an objection was raised by counsel representing the appellant/defendant with regard to non-admissibility for want of sufficient stamp. As no such objection appears to have been raised when the agreement was admitted in evidence, in view of Section 36 of the Stamp Act, no such objection can be raised at a subsequent stage. In this regard reference can be made to judgment of this Court Trishla Devi Jain Vs. Vineeta Singla, 2011 (4) Law Herald 3801. In this view of the matter, the appellant cannot derive any advantage to his contention that either the agreement to sell was not sufficiently stamped or the same can not be read into evidence for want of adequate stamp.

Counsel for the appellant has raised the plea that the agreement to sell has not been proved in accordance with law, as none of the attesting witness has been examined. Firstly, the factual findings consistently recorded by the Courts below are not amenable to challenge in the second appeal unless they are found to be perverse. Secondly, the appellant/defendant has not denied his signatures on the agreement to sell. There is no such requirement in law that the agreement to sell must be attested by a witness or a particular number of witnesses. Equally settled is that there is no requirement in law that to prove an agreement to sell, one of the attesting witnesses must be examined before the Court. The statement of a plaintiff that inspires confidence in the mind of the Court may be sufficient to prove the

agreement to sell particularly in the circumstances where the defendant has admitted his signatures thereon. The appellant has raised a plea that he had taken a loan of Rs.32,000/- from the respondent/.plaintiff and his signatures were obtained for the purpose of securing that loan. He has further raised a plea that he had already repaid the said loan amount in June, 2005 but the respondent did not return the original papers at that time. It is difficult to accept to reason that a literate person would put his signatures on blank papers just for taking a loan of Rs.32,000/-. It further defies logic that a person would not insist for return of the documents or at least execution of a receipt at the time of repayment of the loan. The story propounded by the appellant/defendant in regard to blank signatures appears to be patently false and untenable. This apart, the factum of possession of house in question with the plaintiff/respondent stands admitted in view of the written statement filed by the appellant/defendant. Analyzed from any angle, I do not find any merit in contention of the appellant that the agreement to sell has not been proved in law.

This brings the Court to the plea of hardship raised by the appellant. Concededly, no such plea of hardship was raised in the written statement. The appellant/defendant appeared in the witness box to rebut the evidence adduced by the respondent/plaintiff and prove his case set up in the written statement. The statement made by the appellant is conspicuously silent if the house in question is the only house owned by him and in case specific performance of the

agreement to sell is allowed, the same would result in extreme hardship for him and his family. Keeping in view the scenario that no such plea of hardship was raised in the written statement, or during the course of evidence, I find myself unable to accept submission of counsel for the appellant that the judgments and decrees passed by the Courts below are liable to be modified as prayed for.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

May 13, 2015

D. Gulati'

(REKHA MITTAL)

JUDGE