

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

R.S.A. No.3469 of 2014 (O&M)

Date of decision: 06.05.2016

Harnek Singh

..Appellant

Versus

Sukhwant Singh

..Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. A. S. Gulati, Advocate for the appellant.

Jitendra Chauhan, J.

In this regular second appeal, the appellant-defendant has challenged the judgment and decree dated 09.05.2014 of Additional District Judge, Sirsa dismissing the appeal filed by the appellant against the judgment and decree dated 29.11.2013 of Additional Civil Judge (Sr. Divn.), Dabwali, decreeing the suit of the respondent-plaintiff.

Brief facts of the case are that the appellant-defendant had executed an agreement to sell dated 18.04.2011 in favour of the respondent-plaintiff qua the land mentioned in the head note of the plaint (herein after referred as 'suit land') for the total sale consideration of Rs.9,73,750/- (Rs.8,00,000/- per killa) and the appellant had received a sum of Rs.1,50,000/- as earnest money.

The targeted date was 14.03.2012 for the execution of the sale deed. On the said date, the appellant had not come in the office of Sub Registrar, Dabwali, Sirsa, Haryana and the respondent along with the remaining sale consideration remained present there. Thereafter, the respondent made several requests to the appellant for the execution of the sale deed, but the appellant kept on lingering the matter on one pretext or the other. Feeling aggrieved, the respondent-plaintiff filed the suit, which was decreed by Additional Civil Judge (Sr. Divn.) Dabwali, Sirsa, Haryana. Against the same, the appellant had filed the appeal, but the Ist Appellate Court, affirmed the judgment and decree passed by the trial Court.

Hence, the present appeal.

It is contended that the agreement to sell dated 18.04.2011 is the result of fraud. The learned Courts below have ignored the testimony of DW1-Gurmeet Singh (attesting witness), wherein he categorically stated that he had never signed or executed the alleged agreement. The plaintiff has not examined the scribe of the agreement and also there is no such seal or name of the scribe in the same. Further, he refers to the testimony of PW1-Mahender Singh, Registry Clerk, Tehsil Office, Mandi Dabwali, wherein he deposed that neither the respondent nor the Tehsildar

signed in his presence on the affidavit, Ex.P1, furnished by the respondent regarding his presence on the targeted date i.e.14.03.2012.

Heard.

To prove the execution of the agreement to sell dated 18.04.2011, the respondent has examined PW5-Anil K. Gupta, Handwriting and Finger Print Expert, who prepared a report that the disputed thumb impressions are similar to the standard thumb impressions. To rebut this evidence, the appellant has not examined any handwriting expert or any other similar evidence. Further, PW3-A. K. Goyal, Notary Public Mandi Dabwali, deposed that the agreement in question was notarized by him at the instance of the appellant in favour of the respondent and with regard to it he made an entry in his register at Sr. No.124 dated 18.04.2011, which also bears the thumb marks of the appellant and signature of the respondent. PW4-Dalbir Singh (attesting witness) stated that the appellant had put his thumb impression on the agreement and respondent made a signature on the same and in lieu thereof, the respondent gave the earnest money to the appellant in his presence. Moreover, for the execution of the sale deed, the targeted date was 14.03.2012, but on that day, the appellant did not turn up for the said purpose and the respondent

remained present there, which is duly proved from affidavit, Ex.P1, which the respondent got attested from the Executive Magistrate and by the testimony of PW1-Mahender Singh, Registry Clerk, Tehsil Office, Dabwali. In this way, the respondent has proved the due execution of the agreement and his readiness and willingness to get the sale deed executed. The stand of the appellant is that the alleged agreement is the result of fraud, however, he has not led any convincing oral or documentary evidence in support of his stand. He only examined one of the attesting witnesses, Gurmeet Singh, whose statement cannot be relied upon as during his cross-examination he made the contradictory statements. In these circumstances, merely on the non-examination of the scribe of the agreement it cannot be said that the alleged agreement was executed fraudulently. Even in civil cases, fraud is required to be proved beyond reasonable doubt just like a criminal charge. Reference in this regard can be made to **'Har Narain and another VS. Revti Parkash and others', 2012 (2) PLR 409 (P&H)**. In the instant case, however, not to talk of proving the alleged fraud beyond reasonable doubt, the appellant-defendant has even failed to establish the alleged fraud by preponderance of evidence. Evidence of respondent-plaintiff far outweighs the evidence led by the appellant-defendant.

There is no misreading or misinterpreting of evidence.

There is no infirmity in the concurrent findings of facts arrived at by both the Courts below. No substantial question of law is involved in this case. The judgments and decrees of both the Courts below are hereby affirmed.

For the foregoing discussion, there is no merit in this appeal, which is hereby dismissed in limine.

06.05.2016

ashok

(JITENDRA CHAUHAN)
JUDGE