

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 9684-C of 2014 &
RSA No. 4175 of 2014

Date of decision: January 21, 2016

Karam Singh

...APPELLANT

Versus

Bahadur Singh

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Keshav Pratap Singh, Advocate,
and Mr. Vishwajeet Singh, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ambala dated 06.11.2012, whereby the suit for specific performance of the agreement to sell dated 14.03.2006 by issuing a direction to the appellant-defendant to deliver the possession of the suit property with the consequential relief of perpetual injunction restraining him from selling, alienating or in any other manner, changing the nature of the suit property situated in Village Kurbanpur, Tehsil and District Ambala to anyone else, has been decreed, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District Judge, Ambala on 19.05.2014.

2. It is the contention of the learned counsel for the appellant that as per the stand taken by the appellant, there was no agreement to sell entered into between the appellant-defendant and the respondent-plaintiff on 14.03.2006. He contends that once a stand has been taken that there was no agreement to sell, there would be no question of specific performance thereof. As a matter of fact, in an application moved by the appellant for adducing additional evidence before the Lower Appellate Court, a stand was sought to be proved that the stamp paper, on which the agreement to sell has been executed, was, in fact, stolen from Om Pal Rana, with whom he has entered into the agreement to sell for sale of one plot, for which he had signed the blank papers and the said papers having been stolen by Mohinder Singh, who, in connivance with Bahadur Singh-respondent-plaintiff, converted it into an agreement to sell with a conspiracy to share the booty of the said property. He contends that, therefore, there was no question of any payment of earnest money as well to appellant. Assertion has also been made that the respondent-plaintiff did not have the means and resources to pay the earnest money. A contention has further been raised that the signatures on the agreement to sell and the register of the stamp vendor have also been denied and as per the evidence of the handwriting expert produced by the appellant-defendant, namely, Mani Jain DW5, the signatures on the agreement to sell dated 14.03.2006 were not that of the appellant-defendant. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments but do not find any illegality in the same.

4. Firstly, the respondent-plaintiff has produced ample evidence on record proving the purchase of the stamp papers by the appellant-defendant. The signatures although were denied on these two documents and reliance was placed upon the report of the handwriting expert Sh. Mani Jain, DW5 but unfortunately, the standard signatures taken to be that of appellant by the handwriting expert, have been denied by the appellant-defendant himself in his cross-examination. Therefore, the report of the handwriting expert cannot be relied upon. It may not be out of way to mention here that the respondent-plaintiff has also produced the evidence of Devinder Parsad PW4, the document expert, who has proved his report and has given a report that the disputed signatures are that of the appellant-defendant. That apart, once the appellant-defendant has denied the execution of the agreement to sell, there is no question of denying his own signatures as the said document has not come into existence, according to him.

5. By way of application for adducing additional evidence, the appellant-defendant has made an effort to change his stand with regard to the stamp papers and signatures thereon, on which the agreement to sell dated 14.03.2006 has been executed by asserting that he had entered into an agreement to sell for a plot with one Sh. Om Pal Rana but the plot since could not be identified and was said to be disputed, the agreement did not mature. However, the blank papers, which have been signed by the appellant-defendant, remained in possession of Om Pal Rana, which, according to the stand further taken, were stolen by Mohinder Singh fraudulently, who connived with the respondent-plaintiff to execute the agreement to sell dated 14.03.2006. This plea, as has been sought to be

taken, has never been projected by him while filing the written statement and no reason whatsoever has been given for not taking the said stand earlier. There is nothing new which can be said to be not to the knowledge of the appellant-defendant when the written statement was filed. The rejection of the application by the learned Lower Appellate Court on the ground that the appellant having disputed and rather stated that he had not entered into any agreement to sell, this stand is not permissible as it would be self contradictory.

6. As regards the contention of the learned counsel for the appellant that the respondent-plaintiff did not have the resources to enter into an agreement to sell and hand him over the earnest money of ₹ 15 lacs on 14.03.2006, suffice it to say, firstly, the appellant-defendant has altogether denied the agreement to sell and, therefore, there is no question of the respondent-plaintiff proving the source and resources for making payment of the earnest money. That apart, on the basis of the evidence, which has been led by the respondent-plaintiff, the handing over of the consideration amount at the time of execution of the agreement to sell dated 14.03.2006 has been amply proved. The stand, thus, of the counsel for the appellant, therefore, stands rejected. The judgments, as passed by the Courts below, are in accordance with law on due appreciation of the pleadings and evidence brought on record which do not call for any interference by this Court.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

January 21, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**