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

**RSA-4270-2014 [O&M]**

**Date of Decision : January 21<sup>st</sup> , 2016**

Rajwant Singh

.... Appellant

Versus

Pawan Kumar

.... Respondent

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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. Sachin Jain, Advocate,  
for the appellant.

Mr. R.S.Dhiwan, Advocate,  
for the respondent.

**SHEKHER DHAWAN, J.**

Present Regular Second Appeal is directed against the concurrent findings of fact recorded by both the Courts below, whereby Additional Civil Judge [Senior Division], Chandigarh vide judgment and decree dated 14.03.2014 decreed the suit of Pawan Kumar, plaintiff [respondent herein] for specific performance of agreement of sale dated 25.7.2005 [Ex. P1] and the first appeal filed by Rajwant Singh, the present appellant, was dismissed vide judgment and decree dated 15.5.2014 by learned District Judge, Chandigarh.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

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3. Relevant facts of the case, that parties to the litigation allegedly entered into an agreement of sale of house measuring 200 sq. yards in Village Khuda Ali Sher, U.T. Chandigarh, dated 25.7.2005 for total sale consideration of ₹ 10.00 lacs. A sum of ₹1.00 lacs was paid as earnest money against receipt in the presence of two witnesses, namely, Gurdial Singh, Sarpanch and Ajmer Singh, Ex-Sarpanch of the village and remaining amount was to be paid at the time of execution of sale deed. However, the defendant failed to get the sale deed executed. Though, the plaintiff appeared before the Sub Registrar, Chandigarh alongwith balance consideration on the date fixed, legal notice was also issued but to no effect and as such, suit was filed by the plaintiff.

4. The defendant contested the suit taking the plea that the agreement was just a paper transaction. In fact, the defendant was in dire need of money and the plaintiff offered him to give loan. It was mutually agreed that the agreement of sale should be executed which would be security for repayment of loan amount of ₹ 1.00 lac and on re-payment of the loan amount, the document would be destroyed. Later on, the plaintiff changed his version. As per defendant, the transaction was only in the nature of money lending and the document was executed as security for re-payment of loan of ₹ 1.00 lac along with interest @ 10% per annum and thereafter, the plaintiff wanted to use the said document as instrument of agreement of sale and the value of the suit property is ₹ 50.00 lacs at least and the same cannot be sold for ₹10.00 lacs only. He prayed that the suit be dismissed.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as

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documentary evidence brought on record by the parties, the Court of First instance decreed the suit of the plaintiff for specific performance of agreement Ex. P1. The appeal preferred by the defendant before the Court of first Appeal was dismissed. As such, the present Regular Second Appeal.

7. Learned counsel for the appellant mainly submitted that the Courts below have completely ignored the facts which are available on the file. Agreement in question was required to be proved by the plaintiff by examining the attesting witnesses in the case. However, in the case in hand, both the attesting witnesses, namely Gurdial Singh and Ajmer Singh have not supported the version of the plaintiff-respondent. He further submitted that law on the point is settled that the statement of a witness is to be taken as a whole and not his examination-in-chief alone. That way, if the statement of both the attesting witnesses is taken into consideration as a whole, they have not supported the plaintiff's version. Rather, they have supported the defendant version. Both the witnesses had deposed during their cross-examination that they had not gone through the contents of the affidavits, Ex. PW-2/A and PW-3/A. They have also taken the plea that the contents of affidavits were not even explained to them. Both the witnesses have specifically deposed that agreement of sale was with regard to the loan given by Pawan Kumar as a sum of ₹1,00,000/- was paid by him to Rajwant Singh.

8. Learned counsel for the appellant also submitted that in fact, the entire case of the defendant that the agreement [Ex.P1] was never intended to be executed for agreement of sale of the suit land, rather, the said document was executed as a token of advancement of ₹1.00 lakh to

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Rajwant Singh. The case of the defendant, right from the beginning, is that no agreement of sale was ever executed by the defendant. Rather, loan of ₹1.00 lakh was taken by appellant Rajwant Singh and Ex. P1 is the forged document, which was later on converted into agreement of sale. However, both the Courts below have completely ignored the evidence and same resulted into erroneous findings of fact and the judgment and decree passed by the Courts below are liable to be set-aside and the present appeal be accepted.

9. While arguing on these points, learned counsel for the plaintiff-respondent submitted that both the Courts below have rightly appreciated the controversy that the agreement, Ex. P1 was duly executed. The same was proved by the plaintiff as he himself stepped into the witness-box. Both the attesting witnesses were also examined and they have supported the case of the plaintiff in their examination-in-chief. The cross-examination was only on the point that they had not gone into the contents of their affidavits, which has been rightly discarded by the Courts below as both the witnesses are educated witnesses and they are supposed to know the contents of the affidavit at the time of their execution itself. Moreso, no complaint was ever made against any body for execution of wrong affidavit. Meaning thereby the cross-examination has been tried to be twisted so as to support the case of the defendant though, the witnesses have not been able to do that even if the entire statement of both these witnesses is taken to be correct. Otherwise, there is no substantial question of law involved in this case calling for acceptance of the present appeal and the same deserves to be dismissed.

10. Having considered the submissions made by learned counsel for

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the parties and taking into consideration the entire controversy, this Court is of the considered view that both the Courts below have given concurrent findings of facts that agreement, Ex. P1 was duly executed by the defendant and the same was duly attested by both the witnesses and the same stands duly proved during the trial of the case. This Court says so for the reason that the plaintiff had filed the suit for specific performance on the ground that the agreement, Ex. P1 was duly executed by the defendant and the witnesses have attested the same. The total sale consideration was fixed to be ₹10.00 lakhs and a sum of ₹1.00 lakh was paid as earnest money. Both the witnesses are respectable of the area as Gurdial Singh is the Sarpanch of the village and Ajmer Singh is the ex-Sarpanch of the village. Target date fixed for execution of the sale deed was 25.11.2005. On the target date, the plaintiff put in his appearance before the Sub Registrar, Chandigarh for registration of the sale deed alongwith balance sale consideration and registration charges. Legal notice dated 1.12.2005 was served by the plaintiff upon the defendant through his counsel for execution of the sale deed, but the defendant failed to perform his part of the agreement. The defendant had come with the plea that the agreement, Ex. P1 is a result of fraud and misrepresentation. However, the plea of fraud has not been proved at all before the Courts below. Law on the point is settled that fraud should be proved strictly because it is very easy to allege a fraud, but the requirement of law is that such allegation of fraud must be proved on the file.

11. Both the attesting witnesses had duly supported the version of the plaintiff in their respective examination-in-chief and admitted their signatures on their respective affidavits. However, in the cross-examination,

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these witnesses gave evasive reply but at the same time, admitted their signatures on the affidavits. The plea taken by the witnesses, namely, Gurdial Singh and Ajmer Singh that contents of the affidavits were not read over and explained to them, was rightly discarded by the Courts below because both the witnesses are respectable of the area as they are Sarpanch and Ex-Sarpanch of the village and they were educated persons. Had they been also victim of the alleged fraud, a complaint should have been filed by them against the said fraud. That has not been done, meaning thereby that both the witnesses had admitted the due execution of the agreement, Ex. P1. In this regard, reliance is placed on a judgment from Hon`ble Supreme Court in **Grasim Industries Limited and another Vs. Agarwal Steel, 2009 (4) CCC 598 (SC)**, wherein it has been held that a person signing the document is presumed to have signed after reading and understanding the document properly unless there is proof of force or fraud. Moreso, in such like cases, once the execution of the agreement was admitted, it was immaterial whether the attesting witnesses supported it or not as admitted facts are not required to be proved. Such a view was taken by Co-ordinate Benches of this Court in **Gurnam Kaur Vs. Charanjit Kaur and another, (2009-4) PLR 143** and **Mohan Singh and another Vs. Kulwinder Singh (2001-2) PLR 776**.

12. As regards the readiness and willingness on the part of the plaintiff to perform his part of contract, the same has been duly proved on the file because the plaintiff has put in appearance in the office of Sub Registrar on the date fixed for execution of the sale deed. Dharaminder Singh [PW-4] deposed that the plaintiff was present in the office of Sub Registrar alongwith a sum of ₹9.80 lakhs and same was shown to the

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Magistrate. PW-5, Des Raj Dhiman, testified that another property was sold to make the payment of balance sale consideration. PW-6, Dayawanti also testified that the plaintiff had borrowed a sum of ₹1.50 lakhs from her through Balwinder [PW-7]. PW-8, Rajinder Singh, Cashier from State Bank of Patiala deposed that the amount was withdrawn by the plaintiff from the bank on 23.11.2005 and 4.8.2005. Thereafter issuance of legal notice and filing of suit for specific performance by the plaintiff establishes the readiness and willingness to perform his part of the agreement. However, the defendant just wanted to wriggle out of this legal obligation on the basis of agreement, Ex. P1 itself. There are no ground to interfere with the concurrent findings recorded by both the Courts below on the basis of facts and evidence available on the file. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs.**, JT 2001(2) SC 407.

13. In view of the above, the present Regular Second Appeal stands dismissed being devoid of any merit.

**(SHEKHER DHAWAN)**  
**JUDGE**

**January 21<sup>st</sup>, 2016**  
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