

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

RSA No.5834 of 2014 (O&M)

Date of decision:29.03.2016

Ramesh Chand Dagar (since deceased) through LRs ... Appellant

Vs.

Sachin Garg and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. R.S. Budhwar, Advocate
for the appellant.

Mr. Akshay Jindal, Advocate
for the caveator/respondents.

AMIT RAWAL J. (Oral)

The appellants, legal representatives of defendant -Ramesh Chand Dagar, are aggrieved of the concurrent findings of facts and law, whereby, the suit for recovery of ₹21,69,000/- along with interest @ 8% per annum within three months from the date of payment till 22.09.2011 and @ 6% per annum, further interest till recovery, has been decreed.

Mr. R.S.Budhwar, learned counsel appearing on behalf of the appellants submits that simpliciter suit for recovery was not maintainable. Remedy was to seek relief of specific performance of the agreement to sell dated 25.02.2005. There is no averment in the suit with regard to agreement to sell, which has become enforceable.

Agreement to sell dated 25.02.2005 has not been proved. There was complete denial in the written statement and this fact has been proved through the testimony of DW2. Thus, both the Courts below have erroneously decreed the suit by treating the suit for recovery.

Mr. Akshay Jindal, learned counsel appearing on behalf of the respondent/caveators submits that appellant (since deceased) was not owner of the property measuring 36 kanals 2 marlas as he was holder of an agreement to sell dated 25.02.2005, which does not contain any "Assignment Clause". In the absence of assignment clause, agreement dated 25.02.2005 could not have been enforced in law. In fact, there is no privity of contract between the respondent-plaintiffs and original vendor, thus, urges this Court that there is no illegality and perversity in the findings rendered by both the Courts below, much less, no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the impugned judgments and decree of the Courts below.

Shorn of the contentions and owing to the factual aspects of the matter, I am of the view that there is no merit in the submissions of Mr. Budhwar, for the reasons that defendant (since deceased) is the holder of agreement to sell dated 25.02.2005 also he entered into agreement with the original vendor. In the absence of assignment clause, he entered into an agreement to sell with the respondent-plaintiffs but the factum of same has not been proved.

There is no privity of contract between the vendee and proposed vendor as defendant was vendee of original vendor by virtue of agreement to sell dated 25.02.2005. The appellants have miserably failed to disprove the un-impeachable evidence of the plaintiffs by examining any expert to belie the signatures on the agreement to sell dated 25.02.2005 which also contains the receipt of earnest money, much less, element of liquidity in terms of provisions of Section 23 of the Specific Relief Act, and therefore, rightly so, both the Courts below have rendered the findings based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 29, 2016
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