

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

R.S.A.No.4187 of 2011 (O&M)

Date of Order: 31.07.2017

Charan Singh and another

..Appellants

Versus

Shiv Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhir Sharma, Advocate,
for the appellants.

Mr. O.P.Sharma, Advocate,
for respondents no.1 to 3.

ANIL KSHETARPAL, J. (Oral)

Defendants no.1 and 2 have preferred this regular second appeal against judgments passed by the Courts below, decreeing the suit filed by the plaintiffs for specific performance of agreement to sell dated 07.03.2002.

Plaintiffs had filed a suit for specific performance of agreement to sell dated 07.03.2002. Defendants in their written statement had pleaded that the thumb impressions of their father were taken on the blank papers and therefore, the agreement is forged and fabricated document.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs, vide judgment and decree dated 10.12.2009.

Appeal preferred by the appellants was also dismissed by the learned first appellate Court after re-appreciating the facts available on the file, vide judgment and decree dated 03.02.2011.

Learned counsel for the appellants has submitted the following submissions: (i) that it is a case of extreme hardship and the courts below have not considered that relief of specific performance of agreement to sell is discretionary; (ii) the agreement to sell is a result of fraud as plaintiff had projected incorrectly that there is loan of Rs.54000/- which was charge on the property of late Sh. Pyare Lal, (iii) the attesting witnesses to the agreement to sell have not been produced by the plaintiffs, therefore, the agreement to sell is not proved. (iv) the parties are closely related as the plaintiffs are nephew of Late Pyare Lal, a vendor; (v) there was a police complaint by late Sh. Pyare Lal in which a compromise was arrived at.

I have carefully considered the submissions of the learned counsels and with their able assistance gone through the judgments passed by the Courts below as well as the record as produced by the counsel.

First submission of learned counsel is with regard to hardship to the defendants.

Learned counsel for the appellants has not been able to point out, the pleadings of hardship in the written statement. There is no issue framed. In these circumstances the appellants cannot be allowed to take the plea of hardship for the first time in this regular second appeal because there was no foundation laid for such plea either in the pleadings or any issue was got framed.

Learned counsel for the appellants has submitted that agreement to sell is result of fraud. The thumb impressions on the agreement to sell are admitted. It is pleaded by the defendants that in fact the land of late Sh. Pyare Lal was not under loan or any charge, rather plaintiffs misrepresented and that is how the agreement to sell was got

forged and fabricated.

I have considered the submissions made by counsel for the appellants. Both the courts below have recorded a findings of fact that the defendants have failed to prove fraud on the record. One of the attesting witness of the agreement is son in law of late Sh. Pyare Lal. Although, he appeared on behalf of the defendants but in cross-examination, proved the agreement to sell. Het Ram, son-in-law of late Sh. Pyare Lal has admitted that late Sh. Pyare Lal had put his thumb impression on the agreement to sell. In these circumstances, the arguments of learned counsel for the appellants cannot be accepted.

Learned counsel for the appellants has further argued that the agreement to sell is not proved because attesting witnesses have not been examined by the plaintiffs.

As noticed above, both the attesting witnesses of the agreement were examined by the defendants in their favour. However, in cross-examination, these witnesses admitted to have attested the agreement to sell. One of them is son-in-law of late Sh. Pyare Lal, a vendor. The agreement to sell is not required to be attested by attesting witnesses. Therefore, it is not correct to say that unless attesting witnesses have been examined, the agreement to sell is not proved. In this case, the attesting witnesses have been examined and have supported the case of the plaintiffs in cross-examination.

Another argument of learned counsel for the appellants is that the parties are closely related and therefore, there was a fiduciary relationship between the plaintiffs and late Sh. Pyare Lal, who was their uncle.

Once, there is no bar, agreement to sell cannot be entered into between the closely related person. Once the attesting witnesses have supported the case of the plaintiffs, although they are closely related with the defendants, therefore, the argument of learned counsel for the appellants cannot be accepted.

Learned counsel for the appellants has further submitted that late Sh. Pyare Lal had filed a complaint to the police, alleging that the agreement to sell has been forged by the plaintiffs. In that complaint, a compromise was arrived at. The said compromise is Ex.P6 on the file. As per compromise, late Sh. Pyare Lal had agreed to execute the sale deed in favour of the plaintiffs. Therefore, this contention of the appellants also cannot be accepted.

In view of the reasons recorded above, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Courts below. Therefore, the present regular second appeal is ordered to be dismissed.

July 31, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No