

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

RSA No.2944 of 2016 (O&M)

Date of decision : 29.08.2017

Mange Ram

...Appellant

Versus

Satender

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Verma, Advocate for the appellant.

Mr. Animesh Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 20.08.2009 with respect to double storey house measuring 200 square yards situated in Village Ugra Kheri, District Panipat. The defendant contested the suit on the ground that the plaintiff is a Financier and defendant had borrowed the amount to repay the loan of Allahabad Bank.

It was pleaded that on 20.08.2009, two agreements to sell were executed. One with regard to the property in dispute in the present case whereas other with regard to the other house measuring 250 square yards.

Learned trial Court after appreciating the evidence available on

the file decreed the suit filed by the plaintiff.

The defendant-appellant filed the first appeal. The learned First Appellate Court also after re-appreciating the evidence available on the file dismissed the appeal and upheld the judgment passed by the trial Court.

Learned counsel for the appellant has submitted that signatures of defendant-appellant were taken on the blank papers. He has further submitted that this is the only house available with the appellant and, therefore, earnest money should be ordered to be refunded.

I have considered the submission of the learned counsel. However, I do not find any force in the same. Agreement to sell is executed on a Non-Judicial Stamp Paper worth ₹100/-. The stamp paper has been issued in the name of defendant-appellant. Stamp paper is for the execution of the agreement to sell. Each page of the agreement to sell is signed by the defendant-appellant. One of the attesting witness is Basheshar who is son of defendant-appellant. He has not been examined in the Court. Therefore, adverse inference has rightly been drawn against the defendant-appellant. In these circumstances, there is no force in the arguments of learned counsel that the signatures of defendant-appellant were taken on the blank papers.

Second argument of learned counsel is that this is the only house available with the defendant-appellant and, therefore, the relief for specific performance of the agreement to sell should not be granted.

He has further submitted that it is the case of hardship.

I have considered the submission. It is not in dispute that through the agreement to sell, plaintiff had paid a sum of ₹6,00,000/- as earnest money. It is further proved on the file that the plaintiff deposited a

sum of ₹9,19,620/- with State Bank of Bikaner and Jaipur. Defendant has not pleaded hardship in the written statement. No issue has been framed.

For the first time in this Court, defendant cannot be permitted to take a defence of hardship particularly when there is neither any pleadings nor any evidence to this effect. It is further not in dispute that the defendant-appellant has already performed his part of the contract with regard to the second agreement to sell.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts.

Regular Second Appeal is dismissed.

29.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No