

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

RSA No.3817 of 2016 (O&M)  
Date of decision : 07.11.2017

Nathi Singh

...Appellant

Versus

Jitender Dutt

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. S.S. Salar, Advocate for the appellant.

Mr. I.S. Pabla, Advocate for the respondent-Caveator.

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**ANIL KSHETARPAL, J. (ORAL)**

**CM No.9932-C of 2016**

Application is allowed, as prayed for.

**Main Case**

The defendant-appellant is in Regular Second Appeal against the judgment passed by the learned Additional District Judge, Kurukshetra.

The plaintiff had filed a suit for specific performance of the contract dated 07.11.2006, whereby the defendant had agreed to sell the land measuring 13 kanals 11 marlas being 1/4<sup>th</sup> share of the land measuring 54 kanals 3 marlas for a sum of ₹10,00,000/-. It was asserted that the

defendant had received a sum of ₹5,00,000/- as earnest money and the date for execution and registration of the sale deed had been fixed as 20.02.2007.

The defendant contested the suit and pleaded that one Sh. S.S. Sharma who was his Commission Agent had offered to get the tower of the Reliance Company installed on a land measuring 10 feet x 10 feet and under that pretext, the defendant had handed over the papers on which the agreement to sell has been forged.

To prove the agreement to sell, the plaintiff himself appeared in the witness box and also examined the attesting witness PW2-Sushil Kumar. The plaintiff further examined the Stamp Vendor from whom the non-judicial stamp papers for the purpose of the execution of the agreement to sell were purchased. The Stamp Vendor further proved that the defendant had put his thumb impressions on the register maintained by him.

Although, learned trial Court dismissed the suit, however, the learned First Appellate Court after re-appreciating the evidence available on the file decreed the suit filed by the plaintiff. Learned First Appellate Court has discussed the evidence in detail and had arrived at a conclusion that the view taken by the trial Court was erroneous.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the photocopies of the record produced by the learned counsel for the parties.

Learned counsel for the appellant has submitted as under:-

1. The suit is barred under Order 2 Rule 2 CPC.

2. From a bare look at the agreement to sell, it is proved that the thumb impressions of the defendant are for the purpose of affidavit or for drafting of pleadings to be filed in the Court.
3. The price of the land at which the land is agreed to be sold is much less than the market price and, therefore, the decree for specific performance could not be passed.

On the other hand, learned counsel for the respondent has supported the judgment passed by the learned First Appellate Court. He has submitted that there was no issue framed by the Courts below on Order 2 Rule 2 CPC. He has further submitted that the defendant-appellant did not press this point even in the absence of issue either before the trial Court or before the First Appellate Court. He has further submitted that a bare look at the agreement to sell would show that on the first page, the defendant-appellant had put his thumb impression as well as on the second page also he had put three thumb impressions. One of the thumb impression is on the revenue stamp. He has further submitted that the defendant did not even pray for framing of an issue about the inadequacy of the price the land. He has submitted that the price is determined by the agreement between the parties and the Court cannot deny the relief on this count as per Explanation 1 of Section 20 of the Specific Relief Act.

As far as first argument of the learned counsel that the suit is barred under Order 2 Rule 2 CPC, it is sufficient to mention that the defendant did not seek any issue on Order 2 Rule 2 CPC. No argument was raised before the Courts below on this aspect.

In Regular Second Appeal, for the first time, counsel for the

defendant has raised such argument. Still further, it is not in dispute that the plaintiff had filed a suit for injunction previously but that was before the date on which the cause of action to file the suit for specific performance had arisen. The target date for execution of the sale deed was 20.02.2007 whereas the suit for injunction was filed on 30.01.2007. Still further, the suit was withdrawn by the plaintiff on 12.02.2008 with the permission of the Court to file a fresh one. Therefore, in the considered opinion of this Court, since on the day the suit for injunction had been filed, the plaintiff was not having cause of action to file a suit for specific performance and the suit was withdrawn with a permission to file a fresh one. The suit filed by the plaintiff would not be barred under Order 2 Rule 2 CPC.

Learned counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court reported as *(2013) 1 Supreme Court Cases 625* titled as *Virgo Industries (Eng.) Private Ltd. Vs. Venturetech Solutions Private Ltd.* to contend that the subsequent suit is barred under Order 2 Rule 2 CPC. The facts of this Court are distinguishable. In this case, the defendant had not only cancelled the agreement to sell but refunded the amount of earnest money before suit for injunction had been instituted. In these circumstances, Hon'ble the Supreme Court held that on the day the suit for injunction was filed, the plaintiff was in the knowledge of the fact that the defendant has refused to execute the sale deed. Hence, this judgment would not be applicable in the facts of this case.

Second argument of the learned counsel is that the thumb impressions of the defendant are for the purpose of execution of the affidavit or the pleadings to be filed in the Court.

I have examined the photocopy of the agreement to sell. The defendant has put up four thumb impressions. The first page bears a thumb impression at the end whereas second page where the agreement to sell comes to an end, defendant has put in three thumb impressions. One of the thumb impression is on a revenue stamp paper. Normally this thumb impression is put at the time when the amount is being received. It is proved on the file that ₹5,00,000/- was received by the defendant through the agreement to sell as earnest money. Still further, the contention of the learned counsel is against the pleadings. The defendant in the written statement had pleaded that the documents were handed over to Sh. S.S. Sharma for the purpose of giving on lease some part of the land. It is not the case of the defendant that he had put thumb impressions for signing some pleadings or affidavits to be filed in the Court.

Last submission of the learned counsel is that the price of the land was ₹50,00,000/- but as per the agreement to sell, the total sale consideration is ₹10,00,000/-.

I have considered the submission. As per Explanation 1 of Section 20 of the Specific Relief Act, mere inadequacy of the consideration cannot be a ground to deny the specific performance. The agreement to sell is a contract between the parties and once the parties with open eyes entered into a contract, they are bound to honour the same. Still further, the appellant-defendant has not produced on record any substantive evidence to prove that the market value of the land in dispute was ₹50,00,000/- and not ₹10,00,000/-.

Learned counsel for the appellant has merely relied upon a line

in the cross-examination of the plaintiff which cannot be read in isolation.

If one reads the complete statement, there is no admission on the part of the plaintiff that the rate of land is ₹50,00,000/-.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

**07.11.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**