

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

109

RSA No.2508 of 2015 (O & M)
Date of Decision:21.11.2017

Kashmir Chand and another

...Appellants

Versus

Ram Sarup

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

Defendants-appellants are in regular second appeal against the judgment passed by the learned First Appellate Court dated 01.11.2014.

Plaintiff had filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff. Plaintiff claimed that he has constructed a residential house over the suit land, which was got damaged and as such the plaintiff was re-constructing the same when the defendants started interfering. Plaintiff further pleaded that he had borrowed a sum of Rs.50,000/- from defendants in the year 2009 and at that time defendants had obtained signatures of the plaintiff on some blank papers. Plaintiff further pleaded that he has come to know that the defendants have converted these blank papers bearing signatures into an agreement to sell with respect to land measuring 7 marlas.

Defendants appeared and contested the suit. Defendants pleaded that the plaintiff had entered into an agreement to sell on 23.07.2009 with defendant No.2 for sale of his land measuring 6 marlas and 6 sarsai for a total sale consideration of Rs.3,90,000/- and entire sale

consideration was paid and possession was taken.

Learned trial Court dismissed the suit filed by the plaintiff. However, learned First Appellate Court on re-appreciation of evidence available on the file, reversed the judgment of the trial Court and decreed the suit filed by the plaintiff.

Learned First Appellate Court has given following reasons for accepting the appeal:-

(i) Original agreement to sell is neither produced nor proved on the file.

(ii) No marginal witness of the agreement to sell has been examined.

(iii) Defendants have not filed any suit for specific performance of the agreement to sell dated 23.07.2009, although, more than 5 years has elapsed and alleged scribe of the agreement to sell has not been examined.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below. Learned counsel has submitted that the plaintiff had admitted his signatures on the agreement to sell. He submits that once the signatures on the agreement to sell have been admitted then the fact of delivery of possession would be deemed to have been admitted.

I have considered the submission. It is the case of the plaintiff in the plaint that his signatures were taken on the blank papers when he borrowed an amount of Rs.50,000/-. Plaintiff had come to the Court with clean hands. He had disclosed that he had signed some documents. It was

to produce and prove the original agreement to sell while leading evidence.

The agreement to sell is not an instrument of title. Defendants would not get any right, title or interest in the property only on the basis of agreement to sell. Plaintiff is the owner and the defendants have not filed any suit for specific performance of agreement to sell.

In these circumstances, once the defendants have no right, title or interest in the property, therefore, there is no error in the judgment passed by the learned First Appellate Court.

For the reasons recorded above, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned First Appellate Court.

Hence, this regular second appeal is dismissed.

21.11.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes
Whether Reportable : No