

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA No.4831 of 2016 (O&M)

Date of decision: 01.11.2017

Mahla Singh

..... Appellant

Versus

Roopa Bai and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Nitin Rampal, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in regular second appeal against the judgment passed by learned Additional District Judge, Fazilka.

Plaintiff filed a suit for specific performance of the agreement to sell along with a consequential relief of permanent injunction. It was pleaded that the defendant-Roopa Bai, a widow had entered into an agreement with respect to the land measuring 8 Kanal on 17.12.2009 for a sum of ₹ 75,000/-. It was asserted that out of ₹ 75,000/-, ₹ 40,000/- was paid as earnest money.

In the written statement, it was pleaded that one Surinder Kaur had purchased four acres of land from Provincial Government and thereafter, there was an exchange with Roopa Bai i.e. defendant No.1. However, the plaintiff had raised a dispute claiming that he is in possession of the property. He also filed an application for correction of the Khasra Girdawari. Suit was decreed by the trial Court.

However, learned First Appellate Court after re-appreciating the evidence available on the file dismissed the suit filed by the plaintiff while accepting the appeal. Learned First Appellate Court has given three main reasons for dismissal of the suit:-

- (i) Plaintiff had filed a written statement in an earlier suit filed by defendant No.1 on 08.02.2010. The aforesaid suit was with respect to 32 kanals which includes 8 kanal claimed through the present suit. However, plaintiff while filing the written statement in the aforesaid suit did not disclose that an agreement to sell dated 17.12.2009 has been executed in his favour by the opposite side. It was natural for the plaintiff to defend the aforesaid suit or at least make an assertion that there is an agreement to sell in his favour.
- (ii) The price of the land is shown to be ₹ 75,000/-. Although, it is admitted fact that rental of the aforesaid land is approximately ₹ 35,000/- to ₹ 40,000/- per annum. The learned First Appellate Court has found that the price sought to be projected upon is very low as compared to market price.
- (iii) The agreement to sell was denied by the widow-defendant, however, the plaintiff did not produce any evidence to prove her thumb impressions. No expert was examined, although the science to compare thumb impression is a perfect signs.

Learned counsel for the appellant has submitted that the finding arrived at by the First Appellate Court is without referring to mark 'D', an affidavit of the defendant. However, since the aforesaid document

neither proved on the file nor exhibited, hence this Court is unable to look into the aforesaid document. The aforesaid document is only a photocopy of the affidavit. Original has not been produced.

Learned counsel for the appellant could not point out any substantive error in the judgment passed by the learned First Appellate Court. Learned First Appellate Court has discussed the evidence in threadbare and appreciated it.

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

Appeal is dismissed.

01.11.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No