

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

RSA No.3577 of 2015 (O&M)

Date of decision : 16.11.2017

Baljit Singh

...Appellant

Versus

Jagjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Chauhan, Advocate for the appellant.

Mr. S.S. Panag, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant 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 24.09.2004. Plot measuring 821 square yards was agreed to be sold for a sum of ₹6,97,850/-, out of which, ₹75,000/- was received as earnest money. The target date for execution and registration of the sale deed was 30.11.2005. It is the case of the plaintiff that the defendant has refused to honour the agreement.

On the other hand, the defendant denied the agreement to sell and pleaded that the agreement to sell is forged and fabricated document. It was further pleaded that the defendant alongwith certain other co-owners had sold certain property vide sale deed dated 28.09.2004. The defendant

further asserted that his signatures were taken on the blank papers.

Both the Courts below after appreciating the evidence available on the file, decreed the suit filed by the plaintiff after noticing that both the marginal witnesses have been examined and the plaintiff has proved his readiness and willingness to perform his part of the contract as the plaintiff had even got prepared the demand drafts from the bank for balance sale consideration payable to the defendant.

I have heard the learned counsel for the parties at length.

The appellant has filed an application under Order 41 Rule 27 CPC for permission to adduce additional evidence, a copy of the information supplied under the Right to Information Act and copy of the bank opening form to prove that the plaintiff had opened the account subsequently. In the considered opinion of this Court, the evidence sought to be produced in additional evidence is not relevant. The appellant is seeking to produce a copy of the information supplied by the office of the Deputy Commissioner with regard to the purchase of the stamp paper. As per the information supplied, Baljit Singh had purchased a stamp paper of ₹15/- and that stamp paper was purchased for the purpose of executing an affidavit. The agreement to sell was executed on a stamp paper worth ₹300/-. The appellant has failed to connect as to how this piece of information which is sought to be produced in additional evidence would be relevant.

Still further, the appellant is seeking to produce a copy of the account opening form filled by the plaintiff which shows that the account was opened on 04.08.2006. In the considered opinion of this Court, this

would also not improve the case of the defendant-appellant.

This account is joint account between Jagjit Singh and Balwant Singh Sandhu. This information would not prove that Jagjit Singh had no account earlier thereto. In any case, once the plaintiff had come to the Court with specific assertion that he had got prepared the bank draft for the balance sale consideration, the additional evidence sought to be produced would be of no use.

Still further, at the stage of Regular Second Appeal, the appellant cannot be permitted to take up a new defence which were neither pleaded nor any evidence was led. These documents are not per se admissible.

For the reasons recorded above, application bearing No.8681-C of 2015, is dismissed.

Learned counsel for the appellant has submitted that the defendant-appellant alongwith other co-owners had already sold the property in dispute to a company namely G.K. Housing and Developers Private Limited. No doubt, the defendant pleaded this fact in the written statement, however, the defendant neither sought any issue nor press this point at the time of the arguments. A reading of the judgments passed by the Courts below would show that this point was not pressed at the time of the arguments. The plea taken by the appellant require adjudication after appreciation of evidence. Once the plaintiff has failed to press this point before the Courts below, this Court feels that the appellant cannot be permitted to raise such point at this stage.

Next argument of the learned counsel is that the agreement to

sell is not registered as possession was delivered. This issue has been settled by the Hon'ble Division Bench of this Court. For the purpose of filing a suit of specific performance of the agreement to sell, the agreement to sell is not required to be a compulsory registration. The amendment in the Registration Act is only dealing with the issue of protection of the possession in terms of Section 53-A of the Transfer of Property Act.

Reference in this regard can be made to the judgment 2013(2) CCC 188, *Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others.*

Finding no merit. Regular Second Appeal is dismissed.

16.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No