

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.3587 of 2015(O&M)

Date of Decision:-21.09.2017

Lakhan Singh.

.....Appellant.

Versus

Devinder Sharma.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S. Mamli, Advocate for appellant-Defendant.

JASWANT SINGH, J.(ORAL)

Appellant-Defendant is in second appeal against the concurrent findings returned by the Courts below, whereby respondent/plaintiff's suit for possession by way of specific performance was decreed by Civil Judge (Sr. Divn.), Yamuna Nagar vide judgment and decree dated 05.05.2011 and the findings thereof were affirmed by the learned Additional District Judge, Yamuna Nagar vide judgment and decree dated 24.02.2015.

Learned Counsel for the appellant has argued that both the Courts below have completely misread the evidence on record as it is apparent that the defendant/appellant had never entered into agreement to sell dated 26.12.2002 (Ex.P-1). It has also been argued that even if it is taken that the agreement to sell was indeed executed between the parties, still the plaintiff-respondent has not been able to prove his readiness and willingness to perform his part of the contract, because as per the evidence

target date was 31.12.2003 whereas suit was filed on 21.07.2005, although as per the version of the plaintiff only a sum of Rs.80,000/- remains to be paid. Therefore, it is argued that the delay of almost 2-1/2 years shows that the plaintiff was not ready and willing to perform his part of contract.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the opinion that the present appeal is devoid of merit and deserves to be dismissed.

A perusal of the record would reveal that in order to prove the due and valid execution of the agreement to sell in question, plaintiff had examined both the attesting witnesses namely PW-1 Krishan Dutt and PW-2 Ravinder Kumar. The evidence of the said attesting witnesses was concurrently found to be consistent with the testimony of the plaintiff and nothing substantial could be elicited from their cross examination. On the other hand, the plea of defendant that the agreement to sell is a result of misrepresentation and fraud does not find any support from any evidence at all. It is settled position of law that plea of fraud has to be proved and gauged in the same manner as if a party has to prove a criminal charge. However, in the present case, such evidence is completely missing. In fact, in cross examination, defendant as DW-1 has admitted his photograph and signatures on the agreement to sell as well as the receipt. He has further admitted that the signatures were appended in the presence of the witnesses. In such circumstances, both the Courts below have rightly held that the agreement to sell was indeed proved on record.

As far as the argument of learned Counsel for the appellant that plaintiff was not ready and willing, this Court is of the opinion that once the defendant had denied the due execution of the agreement to sell, he is

nobody to challenge the readiness and willingness of the plaintiff. This is so because once defendant has denied the execution of the agreement itself, it proves that in fact he was not ready and willing. In such situation it remains between the plaintiff and the Court to see as to whether the plaintiff has been able to satisfy the ingredients of Section 16 of the Special Relief Act or not. From the evidence lead on record as well as the attending circumstances, this Court is of the opinion that both the Courts below had rightly exercised their discretion by ordering specific performance of the contract as the plaintiff had pleaded and proved the necessary ingredients to show his readiness and willingness by entering into the witness box. Therefore, no infirmity can be found in the findings returned by both the Courts below.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 21, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>