

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

**RSA No. 4277 of 2015 (O&M)
Date of Decision: 12.01.2017**

Habban Shah

... Appellant

vs.

Sheruddin

... Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. S.S. Shekhawat, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

This is defendant's regular second appeal against the concurrent findings recorded by the Courts below in a suit for specific performance filed by Sherrudin. The appellant had been directed to execute the sale-deed in favour of the plaintiff after receiving the balance sale consideration.

The appellant-defendant had entered into an agreement dated 19.10.2005 (Ex.PW1/B) to sell the land @ Rs.5 lacs per acre and had received Rs.80,000/- as earnest money. The last date for execution of the sale-deed was 15.03.2006, which was a holiday. On the next day the plaintiff got his presence marked before the authorities, but the defendant failed to turn up and later refused to execute the sale-deed.

The suit was contested by the defendant alleging that he had never entered into agreement to sell with the plaintiff and in fact his thumb impressions were obtained on blank papers by Mr. Mujeeb

Khan, Advocate who was engaged by him in some other litigation and the same were later converted to an agreement to sell and it was forged.

After analyzing the oral as well as documentary evidence produced by the parties, the plea of the appellant regarding fraud was negated and the trial Court decreed the suit and directed the defendant to execute the sale-deed. The defendant failed in appeal, leading to the institution of the instant regular second appeal.

I have heard learned counsel for the appellant and perused the record.

The plaintiff, in order to prove the execution of the agreement to sell dated 19.10.2005, stepped in the witness box as PW1, the scribe of the agreement was examined as PW2, while the attesting witnesses, namely Bhuru Khan and Hasandeep were examined as PW3 and PW6 respectively. On the other hand, to substantiate the plea of fraud, except his self-serving statement, no evidence worth credence was produced by the defendant. An attempt was made by the defendant to prove that the thumb impressions were not his and a finger print expert was examined. The plaintiff also produced a hand writing expert in rebuttal to show that the agreement was signed by the defendant. In order words, contradictory reports were produced. The report of the defendant was found to be inconsistent with the pleadings, as he did not dispute his signatures on the agreement, but claimed that it was engineered by the counsel engaged by him in other litigation. He failed to substantiate his plea.

No evidence was produced by him to show that he had engaged Mr. Mujeed Khan in some other case. It was not shown whether any complaint was made against the plaintiff or that counsel. On the other hand, affidavit, Ex.PW1/C was produced by the plaintiff by virtue of which he got his presence marked before the authorities on 16.03.2006. It was rightly concluded that the defendant had failed to execute the sale-deed though he had received the earnest money. He was directed to execute the sale-deed.

I find no reason to interfere with the concurrent findings recorded by the Courts below which are neither illegal nor suffer from perversity. The findings are affirmed. No substantial question of law arises for consideration in this appeal. Dismissed in limine.

12.01.2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No