

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.12175-C of 2017 in/and
RSA No.5949 of 2016 (O&M)
Date of Decision: 04.10.2017**

Mithu Singh and others

... Appellants

Versus

Mukhtiar Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr. Govinder Singh Brar, Advocate,
for the applicant-appellants.

RAJIV NARAIN RAINA, J.(Oral)

CM No.12175-C of 2017

1. For the reasons mentioned in the application, the same is allowed to the extent of advancing the date. The date is brought forward and the main case is taken up on Board today itself. Prayer for stay of execution of the decree is dismissed in view of the order proposed to be passed after hearing the counsel for some time on the merits of the appeal.

Main Case

1. There is not an iota of evidence to suggest that a house was constructed over the property in dispute admeasuring 1 Kanal 5 ½ Marlas as urged in appeal. The appellants do not deny their thumb impressions on the agreement to sell which has been specifically enforced by both the Courts by decree in a suit by the vendee for possession by way of specific performance of the contract of sale of property.

2. The argument raised in para.12 of the grounds of appeal that the original sale agreement bears the thumb impressions of the three appellants-vendors from three different stamp pads in different ink is not a circumstance which is impossible to believe in the creation of the contract when the thumb impressions are not denied to have been that of the appellants. There were three vendors and there was no legal requirement that thumb signs or signatures would be obtained in the presence of each other and simultaneously as is required for a testamentary Will. This is so because contracts can be oral as well as in writing unlike a Will or other testamentary succession or transfer of property, the last of which has to be in writing, duly executed and stamp duty paid to revenue for conveying rights in immovable property. Both the Courts have appreciated the facts on record and duly considered the criminal and civil cases between the parties prior to the contract of sale finding that those do not detract from coming into existence of an enforceable contract executed by the parties with open eyes and appellants being under no disability to sell the suit corpus. The ingredients of specific performance are satisfied in this case as held by the judgment in appeal. Earnest money was paid. The target date was fixed and the same was avoided by the sellers giving rise to the litigation. Presence in the office of Sub Registrar Kalanwali by the plaintiff-respondent was recorded and the strong presumption arises on readiness and willingness to perform plaintiff's part of the contract and thus the ingredients of specific performance are satisfied in this case.

3. The argument before this Court that appellants are prepared to return twice the amount of earnest money cannot be accepted at this stage

and this contention is an appeal to mercy contrary to the evidence available on record in favour of the plaintiff and against the defendants.

4. The agreement to transfer suit property is within the family members and the appellants and the respondent are closely related to each other. No suspicion arises to nullify the agreement of sale. Findings of fact recorded concurrently by the two courts are not open to interference in second appeal against an appellate decree when the reasoning in concluding the case by a decree of specific performance is sound.

5. No question of law, much less substantial, arises for consideration of this Court under Section 100 of the CPC or under Section 41 of the Punjab Courts Act, 1918 as the case may be.

6. No merit.

7. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

04.10.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*