

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

RSA No.6765 of 2016 (O&M)

Date of Order: 09.08.2017

Pargat Singh

..Appellant

Versus

Gurtej Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Brijeshwar Singh Bhalla, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral).

Defendant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for possession by way of specific performance of agreement to sell dated 10.12.2009, with respect to land measuring 4 kanals.

Defendant, on the other hand, contested the suit and asserted that signatures of the defendant were taken on the blank papers as he had taken a loan of Rs.50,000/- against pronote and receipt.

Plaintiffs in order to prove the agreement to sell, Ex.P1 on the file, examined the attesting witnesses. The written agreement to sell was executed on a non-judicial stamp paper worth Rs.300/- (three leafs of Rs.100/- each). All the pages bear the signature of the defendant.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs.

Defendant filed first appeal. Learned first appellate Court once again after re-appreciating the evidence, upheld the finding of fact arrived at

by the trial Court.

Counsel for the appellant has submitted that defendant has been able to prove that the market rate of the land was much higher. He further submitted that defendant has also examined Harmeet Singh, who accompanied the defendant at the time of transaction. Who has also supported the case of the defendant. He has further submitted that the appellant is a poor man and it is a case of hardship.

I have considered the arguments advanced by counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has produced before me a photocopy of the agreement to sell, Ex.P1. Agreement to sell is executed on non-judicial stamp paper worth Rs.300/- (three leafs of Rs.100/- each). The non-judicial stamp paper was purchased for the purpose of execution of agreement to sell from the stamp vendor. The stamp vendor has put endorsement while issuing the stamp paper. The aforesaid entry of the stamp vendor is signed by defendant-appellant. The each page of the agreement to sell is signed by the defendant-appellant. The agreement to sell is written in "Gurmukhi"(Punjabi) and the signatures of the defendant are also in "Gurmukhi".

Learned counsel for the appellant has submitted that the market rate of the land was much higher. Learned counsel has referred me to the statement of patwari, who has supported that fact.

I have considered the submissions made by counsel for the appellant.

The agreement to sell is result of contract between the parties.

It is only with respect to 4 kanals of land, which is again a share out of a joint khata. In these circumstances, the argument of counsel for the appellant cannot be accepted. As per Explanation-1 of Section 20 of the Specific Relief Act, 1963, mere inadequacy of consideration shall not be deemed to constitute an unfair advantage within the meaning of clause(a) or hardship with the meaning of clause(b). It is for the parties to decide the quantum of the sale consideration. So many factors are taken into consideration while fixing the price. Therefore, the specific performance of agreement to sell cannot be denied on the mere allegation that the agreement to sell is below market rate.

Learned counsel for the appellant has further submitted that the Court has not appreciated the evidence of DW3 Harmeet Singh, who accompanied defendant-appellant when the transaction(agreement to sell was executed) took place.

Harmeet Singh is not signatory to the agreement to sell. The presence of Harmeet Singh is not established at the time of transaction. Still further once there is a document available on the file, which shows that there was an agreement to sell, it is very difficult to believe that the document was only for the purpose of loan. Further, it is the case of the defendant that he had taken a loan of Rs.50,000/- against pronote and receipt. However, neither the pronote nor the receipt has been produced.

Learned counsel for the appellant has further submitted that it is a case of hardship and therefore, the Court should have been granted alternative relief.

I have considered the submission made by counsel for the appellant.

Defendant had not claimed any issue on the hardship before the trial Court. No evidence has been led. It appears that defendant did not even take up this plea of hardship in the written statement. Therefore, the plea of hardship cannot be permitted to be raised for the first time in the regular second appeal.

Taking into consideration the facts and circumstances of the case, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Courts below. Therefore, the regular second appeal is ordered to be dismissed.

August 09, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No