

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

**RSA No.6937 of 2016 (O&M)
Date of Decision: 25.09.2017**

Smt. Surajmal @ Surjo

... Appellant

Versus

Dilbag Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashok Aggarwal, Advocate,
for the appellant.

ANIL KSHETARPAL, J. (ORAL).

Defendant No.2 is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 17.05.2007. The defendant-appellant on the other hand is a sister and a subsequent purchaser. Defendants had denied execution of the agreement to sell.

Learned trial Court after appreciating the evidence available on the file recorded a finding of fact that the execution of the agreement to sell and the payment of earnest money is proved.

Two appeals were preferred, one by defendant No.1 and the second by defendant No.2. Learned first Appellate Court after reappreciating the evidence available on the file upheld the finding of fact recorded by the trial Court.

The subsequent purchaser i.e. defendant No.2 has filed this appeal. No appeal has been preferred by defendant No.1. The first Appellate Court had decided two separate appeals filed by defendant Nos.1 and 2.

Learned counsel for the appellant has submitted that the thumb impressions of Parkashi, vendor have not been proved on the file because the evidence of the expert examined by the plaintiff as PW7 is not in accordance with the procedure laid down. The expert had taken the standard thumb impressions of Parkashi from an affidavit allegedly submitted before the Court without apprising the Court that the expert is wanting to use these thumb impressions as standard thumb impressions for comparison.

I have considered the submission of the learned counsel for the appellant.

There is substance in the argument, however, in the present case, direct evidence is available. Raj Singh, attesting witness has been examined as PW4, Deed Writer Raj Singh Yadav, Advocate has also been examined as PW3. The plaintiff has appeared in the witness box as PW5.

Once the direct evidence is available, the Court is not required to rely upon the opinion given by the expert. The defendant-Parkashi was denying her thumb impressions. She has not produced any evidence to prove that she had not thumb marked the agreement to sell. The agreement to sell bears thumb impressions of Parkashi/defendant No.1 at three places.

Still further, the agreement to sell also bears the signatures of the husband of Parkashi. The husband of Parkashi has not stepped into the witness box. It is also admitted fact that defendants No.1 and 2 live 70 kms

away from the place where the land is situated. The plaintiff is a nephew of the defendants.

Taking into consideration the aforesaid facts, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

25.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No