

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

**R.S.A. No 913 of 2015
Date of decision : 05.12.2017**

GurmeetAppellant

versus

Piara Singh ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.L. Sharma, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

This regular second appeal is directed against the concurrent finding of facts recorded by the Court below whereby the suit of the plaintiff-respondent (herein after to be referred as 'the respondent') has been decreed.

Brief facts of the case set up by the respondent is that appellant was owner of the suit land and on 04.03.2008 he entered into agreement to sell the same to the respondent for a sale consideration of Rs.9 lacs out of which he received Rs.7 lacs as earnest money. On 03.03.2009 i.e the date of execution/ registration of the sale deed was fixed but appellant did not remain present in the Tehsil complex, Bolath and respondent remained present along with sale consideration and sale expenses.

Upon notice, appellant filed his written statement stating therein that the alleged agreement dated 04.03.2008 is false, fraudulent and forged document being played by the respondent upon him. Earlier appellant agreed to sell his 5 kanals of land situated in village Khassan to Gurbachan Kaur to the wife of the respondent @ Rs.30 lacs per acre. Lateron in the presence of the respondent, a

sale deed was got executed from appellant on 18.02.2008 regarding the said 05 kanals of land in favour of Gurbachan Kaur but in the said sale deed, the sale consideration was mentioned as Rs.5 lacs only to avoid the stamp duty by respondent and his wife. No sale consideration was paid to him, as mentioned in the sale deed. At the time of execution of the sale deed, the thumb impression of the appellant were obtained by the respondent and his wife on several stamp papers registers etc under the pretext that they are necessary to prepare a receipt regarding the payment of the amount. The rate of the suit land in the year 2008 was Rs.30,00,000/- per acre. Further the suit land was mortgaged with the Bank for a sum of Rs.4,44,000/- but the balance amount in the agreement was kept only Rs.2,00,000/-

The Trial Court partly decreed the suit of the respondent to the extent that he is entitled to recover a sum of Rs.7 lacs along with 9% per annum simple interest w.e.f 05.03.2008 from the appellant till its realization in full and final. The trial court observed that the respondent failed to explain as to why he had paid Rs.7 lacs without obtaining the possession of the suit land from the appellant and had only kept as Rs.7 lacs as balance whereas the suit land was mortgaged for a sum of Rs.4,44,000/- with the Bank which in fact would have multiplied by many folds. Further respondent admitted that he did not enquire from the Bank regarding the loan amount. Thus, the intention of the respondent was never to purchase the land.

However, on appeal filed by the respondent, the Appellate Court allowed the appeal and the respondent was held entitled to possession of suit property by way of specific performance of agreement to sell. The respondent was held entitled to get executed the sale deed after paying the balance sale consideration of Rs.2 lacs to appellant and the respondent was to bear the

expenses for execution and registration of the sale deed. The appellant was restrained from alienating/transferring the suit property to anybody else. The Appellate Court observed that the respondent was ready and willing to perform the part of the contract on 03.03.2009 as he remained present in the office of Sub Registrar, Bholath, as admitted by P.W.2. The respondent got executed his affidavit (ExP3). P.W.2 also stated that on 04.03.2009 he issued notice copy of which is Ex P4, postal receipt of which is Ex P5 to appellant calling upon him to execute the sale deed as per terms and conditions of the agreement. Further there is no support and corroboration with regard to the plea of the appellant that his signatures were taken on blank papers by respondent and his wife.

Both the Courts below have rightly decreed the suit of the plaintiff as firstly the appellant has failed to prove on record that his signatures have been taken fraudulently by the respondent on the blank papers. He should have examine hand writing expert. The appellant has further failed to place on record sale deed of any nearby land to show that the rate of the land at that time was Rs.30 lacs per acre. P.W.1 Deed Writer appeared in the witness box and has admitted that he has scribed the stamp papers purchased in the name of the appellant on the date of agreement to sell itself. The appellant has further failed to examine any other witness. The oral as well as documentary evidence led by the respondent were sufficient to come to a conclusion that he was ready and willing to perform his part of contract. Simply on the ground that the land covered under the agreement to sell was mortgaged by appellant with Bank that too, as a simple mortgage cannot be said to be in any manner putting any restriction on the rights of the respondent to deal with the property. The appellant has also not filed any cross-appeal against the judgment of the trial Court.

The finding of facts recorded by both the Courts below does not

require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

December 05, 2017
G Arora

(RITU BAHRI)
JUDGE

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