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

**RSA No. 1010 of 2017 (O&M)
Decided on:18.07.2017**

Jai Chand**.....Appellant****versus****Bhajan Singh****.....Respondent****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Sushil Kumar Verma, Advocate,
for the appellant.

Rajbir Sehrawat, J.(Oral)

This appeal has been filed by the appellant-defendant-vendor against the judgment and decree dated 18.11.2016, whereby his appeal which was preferred against the judgment and decree dated 11.11.2014, passed by the learned Additional Civil Judge (Sr. Divn.), Ellanabad was dismissed.

The short details thereto are that there was an agreement dated 18.05.2005, vide which the appellant had agreed to sell 3 Kanals and 8 marlas of his land to the respondent-plaintiff herein. However, the transaction could be materialized. Plaintiff was not ready for getting the sale deed at the stipulated time, as claimed by the appellant. However, regarding that agreement itself, admittedly, a Panchayat was held in the village in which an attempt was made to sort out the matter. This Panchayat was held on 03.03.2008.

As per the claim of the respondent-plaintiff, an agreement to sell was executed on 03.03.2008, itself, whereby the appellant herein agreed to sell 2 kanals 12 marlas of land situated in village Rattakhera, Tehsil Ellenabad, District Sirsa.

As per the claim of the respondent, the appellant did not execute the sale deed

which led him to filing a suit which was decreed in his favour. The appeal filed by the appellant-defendant before the learned Appellate Court was also dismissed. Aggrieved of this, the appellant has come up in present appeal.

While decreeing the suit filed by the respondent, both the courts below have given concurrent findings that the agreement dated 03.03.2008, Ex-PW6/8 duly stands proved by the plaintiff by examining the PW-6 Sandeep Goyal, Advocate and another attesting witnesses namely Parvej Kumar-PW-5, besides the stamp vendor. Both the courts below have also come to the conclusion that the appellant have admitted his signatures on the agreement to sell. Therefore, the plea of the appellant that his signatures have fraudulently been taken by the respondent-defendant was wrong.

The perusal of the judgments passed by the courts below, statements of the witnesses, submission made by the learned counsel for the appellant as well as affidavit of the respondent-plaintiff placed on record of this appeal as Annexure A-1 show that the learned courts below have not committed illegality while decreeing the suit filed by the respondent-plaintiff. The judgments passed by the lower courts below are well reasons and do not required any interference by this Court.

A perusal of the statement of the appellant himself shows that in cross examination, he has categorically admitted that this agreement was scribed by PW6-Sh. Sandeep Goyal on his asking. Not only this, he has further admitted that once the date of execution of sale deed mentioned in this agreement was extended and at the time of extension of the date in this agreement the persons named by him in the statement were present as witnesses. This shows that the appellant duly entered into agreement with his open eyes and clarity of mind and he signed the agreement to sell.

Learned counsel for the appellant has submitted that no consideration was passed in lieu of this agreement to sell, therefore this agreement is void and not enforceable before the Court. However, this contention of the learned counsel for the appellant is rebutted by this very fact that the agreement in question, admittedly, is scribed on asking of the appellant himself and in the agreement itself, it is written that he has received the amount of consideration. Learned counsel has further stated that the witnesses produced by the plaintiff himself have admitted in the cross-examination that money did not exchange hands in their presence. This is also irrelevant because the appellant himself has admitted the execution of the agreement containing stipulation that he has received the money. It appears that money received by the appellant in the earlier agreement has been adjusted by the parties as considerations in the present agreement with mutual consent and with the interference of the above said Panchayat of the village. This is also clear from the fact that in the compromise arrived in the said Panchayat, admittedly, the land required to be sold by the appellant to the respondent was reduced from 03 Kanal 08 marlas to 2 Kanal 12 marlas. This shows that there is absolutely no hanky-panky in the transaction and the parties mutually agreed for whatever has been stated in the present agreement to sell.

Learned counsel has further stated that there are suspicious circumstances attending the transaction of agreement to sell. However, this argument of learned counsel for the appellant is misplaced. The concept of existence of suspicious circumstances as a ground to set aside the instrument of the disposal of property is relevant only in case of instrument of 'Will' which takes effect after the death of executor of the Will. The concept of existence of suspicious circumstances surrounding an agreement as a ground to set aside the agreement to sell is not applicable in case of a mutually agreed agreement to sell.

circumstances are always taken into consideration by the respective parties before entering into the agreement. So, the plea of suspicious circumstances is not maintainable qua agreement to sell in a suit for specific performance.

In view of the above, finding no infirmity in the judgments and decree passed by the Courts below, the same are upheld. The appeal filed by the appellant-defendant is dismissed.

18th July, 2017
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[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No