

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

**RSA No.2150 of 2017 (O&M)
Date of Decision: April 24, 2017**

Harchand Singh

..Appellant(s)

Versus

Bhupinder Singh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Arora, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This is the defendant's appeal seeking reversal of the judgments passed by both the Courts below.

I have heard the counsel for the appellant at great length and I find that the execution of the agreement had been proved by the attesting witnesses. There was a recital that the entire amount of Rs.37,91,000/- had been paid on 02.12.2002. There was no target date and the sale deed could be executed by giving 15 days' legal notice. A Legal notice was sent through the lawyer in 2009, which was received and the defendant had demanded photocopy of the agreement. The plaintiff had pleaded that the copy was shown to the counsel for the defendant and the lease amount was not paid and they were entitled to recover the lease amount @ Rs.3,700/- per Bigha per year along with interest.

The defendant denied the execution of the agreement and pleaded that it was forged and fabricated. The receipt of the notice was admitted.

The plaintiff examined three witnesses and tendered documents. However, the defendant failed to step into the witness box nor examined any witness and his evidence was closed by Court order.

The Trial Court took an adverse view of the fact that the defendant had failed to lead any evidence to prove that the agreement was forged and accepted the plea of the plaintiff and decreed the suit. However, the relief regarding mesne profit was declined.

An appeal was preferred by the defendant and the Appellate Court dealt with all the issues raised by the appellant and rejected the appeal as the agreement to sell was found to be genuine. The Appellate Court had observed as under:-

“During the course of arguments, learned counsel for the appellant/defendant has pointed out that the agreement to sell dated 02.12.2002 has not been scribed on a stamp paper nor it is scribed by a regular Deed Writer. I have perused the original agreement to sell dated 02.12.2002 which is running into three pages. The agreement to sell dated 02.12.2002 has been scribed by affixing adhesive stamps which were purchased by the appellant/defendant Harchand Singh under his signatures from Des Raj Goyal, Stamp Vendor, Malerkotla. Once the stamp papers were purchased by

Harchand Singh under his own signatures, later on he cannot point out defects in the same. Secondly, the agreement to sell was scribed by a Typist. Its due execution is proved on file by examining both the marginal witnesses as referred above. Therefore, if the agreement to sell dated 02.12.2002 Exhibit P1 was not scribed by a regular Deed Writer it cannot go adverse regarding its execution. The agreement to sell does not require registration. Therefore, on this point again there is no adverse effect on the execution of agreement to sell dated 02.12.2002, Exhibit P1.”

The defendant failed to step into the witness box to deny the fact that he had received over Rs.37 lacs. There was a recital in agreement to sell and the marginal witnesses have supported the case of the plaintiff. The defendant did not even respond to the notice nor lodged any complaint against the plaintiff of fraud.

I see no reason to take a different view. The findings recorded by both the Courts below are affirmed and the appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

April 24, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No