

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

RSA No.2992 of 2017 (O&M)

Date of Decision: 31.7.2017

Krishan

... Appellant

Versus

Rajbir

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Naresh Kaushik, Advocate for
Mr.Kulwant Singh Dhanora, Advocate for appellant

RAJIV NARAIN RAINA, J. (Oral)

1. This is defendant's second appeal filed assailing the findings of fact recorded concurrently by both the courts below. The defendant was the vendor entering into contract with the plaintiff by an agreement to sell the suit property. The suit was instituted for possession by specific performance. The plaintiff has proved the sale agreement by producing legal evidence on record. The attesting witnesses to the agreement have deposed in his favour. The defence of fraud committed by the plaintiff on the defendant has been disbelieved. In any case, a plea of fraud is criminal in nature and has to be proved to the hilt by leading unimpeachable evidence, of which none of the kind is available on record.

2. On notice, the defendant appeared in the witness box, got his oral testimony recorded in his turn to lead evidence, but tendered no document in his defence and ultimately, his defence was closed by order dated 20th July, 2012. The argument that other than earnest money, the balance was not paid, has been disbelieved. The plaintiff examined the advocate who scribed the agreement. The defendant staked his defence

pleading that his signatures were taken on blank papers and the same have been misutilised by creating an agreement, which has been falsified by both the courts below. The defence is of complete denial. Then there will be a presumption that the vendee was ready and willing to perform his part of the contract. I have no reason to disagree with the findings of the two courts recorded on appreciation of evidence.

3. On the basis of lack of evidence and materials on record justifying a decree in favour of the appellant, it is not possible for this Court to interfere with the findings of fact recorded by the courts below when the key ingredients to obtain decree of possession by way of specific performance of contract. The judgments and decrees of the courts below do not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

4. For the foregoing reasons, this appeal is found to be without any substance and is dismissed in limine.

31.7.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No