

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

**RSA No.6436 of 2014 (O&M)
Date of Order: 26.10.2017**

Raj Kumar

..Appellant

Versus

Tarsem Rai

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Randhawa, Advocate, for
Mr. I.S.Pabla, Advocate,
for the appellant.

Mr. Pritam Saini, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

C.M.No.15367-C of 2014

Application under Order 41 Rule 27 of the Code of Civil Procedure is for permission to produce additional evidence, namely, an order passed by this Court, dated 18.11.2004, granting bail to the appellant on production of receipt for an amount of Rs.5,70,000/- This contention of the appellant has already been dealt with and take note of by the first appellate Court in paragraph 29 of the judgment.

Taking into consideration the aforesaid fact, the application is dismissed.

RSA No.6436 of 2014

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession by way of specific

performance of the agreement to sell dated 13.11.2003. As per the agreement to sell, 6 kanals 7 marlas of land was agreed to be sold for total sale consideration of Rs.5,35,000/- and the entire payment was made. The original agreement has been produced on the file, which is Ex.P1. The agreement to sell is attested by two marginal witnesses and it has also been notarized by a notary public. The defendant denied the execution of the agreement to sell and also denied the receipt of the amount.

Learned Courts below on appreciation of evidence found that the plaintiff has proved the agreement to sell and payment of the amount. It was further noticed that defendant has failed to substantiate its case before the Courts below.

I have heard counsel for the parties at length and with their able assistance gone through the record of the case.

Learned counsel for the appellant has submitted that the judgments and decrees passed by the Courts below are misreading of evidence and non-reading of evidence. He has further submitted that on the day the plaintiff approached the defendant, he was in custody therefore the story put forth by the plaintiff is false.

I have considered the submission of counsel for the appellant.

Learned counsel for the appellant could not point out any substantive misreading or non reading of evidence by the Courts below. Learned counsel further could not point out any non appreciation of evidence by the Courts.

It is not in dispute that on the day the agreement to sell was executed, defendant-appellant was not in custody. Merely because on the day, the plaintiff alleges that he approached the defendant for entering into

an agreement to sell, on that day the defendant was in custody would not improve the case of the defendant. The agreement to sell is duly thumb marked by the defendant. Defendant has thumb marked both the pages as the agreement runs into two pages. On the second page, defendant has thumb marked at two places, one where narration in the agreement to sell comes to an end and second on the revenue receipt.

Taking into consideration the aforesaid facts and the concurrent findings of fact arrived at by the Courts below, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

October 26, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No