

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

RSA No.8 of 2014 (O&M)

Date of Order: 30.10.2017

Ram Chander and another

..Appellants

Versus

Subhash Garg and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Khatri, Advocate,
for the appellants.

Mr. Sunil Chadha, Sr. Advocate, with
Mr. Chetan Bansal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants (defendant in counter claim) are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs filed a suit for permanent injunction, whereas defendant no.1 filed a written statement and a counter claim claiming possession by way of specific performance of agreement to sell. This appeal is only against decree granting specific performance of agreement to sell.

Both the Courts have concurrently found that the agreement to sell dated 18.06.2010, which is in writing, is proved on the file and the defendant(counter claimant) has proved that he was ready and willing to perform his part of the contract.

It may be significant to mention here that there are two plaintiffs. Both the plaintiffs had signed the agreement to sell dated 18.06.2010. It runs into two pages. Both the pages are signed by both the plaintiffs. The agreement to sell is executed on a non-judicial stamp paper. The counter claimant had himself stepped into the witness box and also examined a

marginal witness i.e. Vinod Kumar.

I have heard counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the appellant has submitted that the agreement to sell is surrounded by suspicious circumstances. He has further submitted that since the scribe has not been examined, therefore, the agreement to sell cannot be said to be proved.

On the other hand, learned counsel for the respondents has supported the judgments passed by the Courts below.

Once the contract between the parties is executed in writing, duly signed by the parties, the Courts should be slow in interfering with the document in writing. Agreement to sell is not to be proved like a testamentary document i.e., Will. No doubt, for proving the Will, the propounder is bound to dispel all surrounding suspicious circumstances but that principle cannot be invoked for proving the agreement to sell.

Learned counsel has submitted that the respondents in the counter claim (plaintiffs in the suit) were uneducated.

Both the appellants (counter claimants) have signed the agreement to sell in Hindi, which is a local language. The agreement to sell is also in Hindi. Both the parties are running industries in the neighborhood, therefore, the appellants (counter claimants) cannot be profess to be innocent.

Through the agreement to sell, Rs.11,25,000/- was paid as earnest money. The counter claim for specific performance was filed within 1½ months of the target date for registration and execution of sale deed.

Next submission of learned counsel for the appellants is that the scribe has not been examined.

In the considered opinion of this Court, examination of scribe

particularly when counter claimants admit their signatures, is not necessary. Once a attesting witness has been examined, the agreement to sell is proved on the file.

Next submission of learned counsel for the appellants is that an attesting witness is related to the counter claimant, therefore, he was an interested witness.

I have considered the submission of learned counsel for the appellants.

No doubt, Vinod Kumar is related to the counter claimant. However, that itself cannot be taken as a ground to deny the relief of specific performance. Usually, the persons are called upon to attest the documents if they are known to one party or the other.

The concurrent findings of facts is not shown to be perverse.

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.

C.M.No.3396-C of 2014

This application is for vacation of interim order dated 09.01.2014.

In view of the judgment passed above, the application has become infructuous and the same is dispose of as such.

October 30, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No