

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

**RSA No. 4718 of 2017
Date of decision : 30.10.2017**

Khurshid and anr. ...Appellants

versus

Sakina Begum and anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.M. Sharma, Advocate
for the appellants.

RITU BAHRI, J.

This regular second appeal is directed against the judgment and decree dated 28.08.2017 whereby learned District Judge, Mewat dismissed the judgment and decree dated 07.11.2016 passed in favour of the appellants.

Brief facts of the case are that defendant No. 1-respondent No. 2 (herein after to be referred as 'respondent No. 2') entered into agreement to sell dated 20.06.2007 in respect of the agricultural land bearing Rect. No. 8, Killa No. 4 (8-0), 14 (8-0), 15 (8-0) total measuring 24 kanals 0 marla to the extent of ½ share measuring 12 kanals 0 marlas situated within the reveune estate of village Madhi, Tehsil Ferozepur-Jhirka, District Mewat with the plaintiffs-appellants (herein after to be referred as 'appellants') and the sale price was settled at Rs.8,00,000/-, out of which, the appellants paid a sum of Rs.7,75,000/- to respondent No. 2 as advance sale price/earnest money at the time of execution of agreement to sell dated 20.06.2007 and

the remaining price was stipulated to be paid by the appellants to respondent No. 2 at the time of registration of sale deed. The appellants were given option to get the sale deed executed and registered in their favour as per the terms and conditions of agreement to sell dated 20.06.2007 at any time according to their own wishes on payment of remaining sale consideration of Rs.25,000/- and the expenses of stamp and registration charges etc were to be born by the appellants and respondent No. 2 agreed not to transfer the land to any other person and in case, respondent No. 2 failed to execute the sale deed, appellants shall have legal right to get the agreement in question specifically enforced through the process of Civil Court. The appellants approached respondent No. 2 many times for execution of sale deed but respondent No. 2 postponed the matter on one pretext or another. Thereafter, a legal notice dated 19.12.2012 was sent to respondent No. 2 to perform his part of agreement i.e to execute and register sale deed in their favour, as per agreement dated 20.06.2007. However, on 23.12.2012, the appellants came to know that respondent No. 2 executed and get registered a sale deed bearing No. 1420 dated 07.12.2012 in favour of respondent No. 1 in respect of the land for a total sale consideration of Rs.12,00,000/-. Respondent No. 1 was fully aware of the existence of agreement to sell dated 20.06.2007 but despite this, he went ahead with the sale deed dated 07.12.2012.

The learned trial decreed the suit of the appellants on the ground that the respondents failed to assail the evidence of the appellants and failed to rebut the execution of agreement dated 20.06.2007. The

readiness and willingness of the appellants has been held to be fully proved by the appellants. The appellants fully proved on record that they had paid the substantial amount to respondent No. 2 and a nominal amount was due towards them. No time was fixed for execution of sale deed. The only plea taken by respondent No. 2 that he had desired to go for Haj pilgrimage to the appellants and was brought by the appellants in the court compound where this fraud has been committed by the appellants. However, the learned trial Court held that that bold statement of Juhru was not sufficient to show the factum of fraud.

However, the learned lower Appellate Court reversed the finding of the trial Court on the ground that the appellants have failed to examine the stamp vendor who issued the stamp paper of agreement to sell dated 20.06.2007 and thus, the lower Appellate Court believed the deposition of Juhru that he was a victim of fraud, as he sold his land to Sakina Begum. Further in the agreement dated 20.06.2007, it is not mentioned whether these thumb impressions are of Juhru or someone else. Even Khurshid when appeared as P.W.2 stated that his brother Rashid had put his signatures on agreement to sell but signatures of Rashid brother of Khurshid are not appearing on the agreement to sell. A sum of Rs.90,000/- was also deposited by Sakina Begum for purchase of stamp papers. The relationship between appellants and respondent No. 2 were also held to be strained and the appellants were residing with their mother in village Pathkhori whereas their father was residing in village Madhi. In the present case, the appellants failed to show as to why kept silent for a period of five

and half years as they sent notice on 19.12.2012 after execution of sale deed regarding the suit land by their father in favour of defendant No. 2.

The finding of facts recorded by the Lower Appellate Court does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

30.10.2017
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>