

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

**RSA No.2153 of 1997 (O&M)
Date of Order: 21.04.2018**

Amarjit Singh

..Appellant

Versus

Karnail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Majithia, Sr. Advocate, with
Mr. Inderjeet Singh, Advocate,
for the appellant.

Mr. Tarun Sharma, Advocate, for
Mr. R.S.Bajaj, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit for possession by way of specific performance of the agreement to sell dated 02.11.1988.

Learned senior counsel appearing for the appellant has submitted that the original agreement to sell has not been produced and photocopy thereof was proved by leading secondary evidence. He submitted that the application for secondary evidence was allowed on 25.08.1996, however, thereafter no evidence was led to prove that the original agreement to sell has been lost.

On careful perusal of the file, it is proved that the agreement to sell dated 02.11.1988 was scribed by a regular scribe i.e. PW1 Ashok

Kumar. He appeared in the evidence and brought his register. In the register, names of vendor and vendee have been mentioned, details of the land to be sold have been disclosed, total sale consideration and the earnest money has also been mentioned. The target date for execution and registration of the sale deed was also mentioned. Coupled with that, a photocopy of the agreement to sell was produced on file. Attesting witness PW5 has also been examined. In these circumstances, the register of the scribe which was having original thumb impressions of the parties was produced in evidence and proved. Hence, there is no substance in the submission of learned counsel for the appellant.

Learned counsel for the appellant has submitted that before the first appellate court, he moved an application pointing out that subsequent vendee had re-paid certain mortgaged amount. He submits that since the application was not decided by the learned first appellate court, therefore, the case should be remanded back.

Redemption of mortgage during the pendency of the suit would not have any impact on the decision of the case on merits. At the most, the subsequent purchaser who had paid certain amount for redemption of the mortgage of the suit property shall be entitled to refund of the same. This issue can very well be examined by the Executing Court while executing the decree. It is by now well settled that the subsequent vendee is required to join the original vendor in executing the sale deed in favour of the decree holder. Such being the position, the issue of entitlement of defendant no.3, the subsequent vendee, shall be adjudicated upon by the Executing Court.

It may be noticed that in this case, the defendants had tried to defeat the right of the plaintiffs by propounding a anti-dated agreement

dated 14.10.1988. Learned trial court has recorded a finding that the agreement dated 14.10.1988, is anti-dated agreement. Learned trial court at the time of arguments, summoned for the original register of the scribe and found that there is over-writing and thereafter the page in the register has been changed and a new leaf has been inserted.

In view of the aforesaid, 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.

April 21, 2018
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(ANIL KSHETARPAL)
JUDGE

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