

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

**RSA No.18 of 2015 (O&M)
Date of Order: 07.09.2018**

Suresh

..Appellant

Versus

Surta through his LRS Premo and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Renu Dhull, Advocate,
for the appellant.

Mr. Rahul Deswal, Advocate,
for LR's of respondent no.1.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, dismissing his suit for symbolic possession by way of specific performance of the agreement to sell dated 11.07.2006. It is undisputed that defendant no.1 is brother of grand father of the plaintiff. In other word, plaintiff is grand son of defendant no.1. Defendant no.1 was not having any male child and it is his pleaded case that when he was sleeping, plaintiff along with certain other persons forcibly took his thumb impressions and thereafter forged an agreement to sell.

Both the courts after examining the evidence have found that the agreement to sell is shrouded by suspicious circumstances and does not have confidence of the court. Courts have further found that defendant no.1 was not the owner of land details whereof was given in the agreement to sell.

Learned trial court has found that in village Fariabad, defendant no.1 was only owner of 1 kanal and 14 marlas of land and he was not owner of 8 kanals of land in village Serdha.

Counsel for the plaintiff before the trial court made a prayer that specific performance of the agreement to sell should be decreed to the extent defendant no.1 was owner, however, since the court found that the agreement to sell is shrouded by suspicious circumstance, which have not been properly explained, the court dismissed the suit.

First appeal preferred was also dismissed on re-appreciation of the evidence. Before the first appellate court, appellant filed an application for additional evidence, so as to produce on file information received under the Right to Information Act and a copy of jamabandi (revenue record). The court found that since agreement to sell itself has not been proved and the thumb impressions of Surta on the agreement to sell are blurred, therefore, the case set up by defendant no.1 has been found more plausible. Application for additional evidence was dismissed by the court after discussing various aspects of the case.

During the pendency of this appeal, counsel for the appellant produced on file a copy of the order passed by learned Additional Sessions Judge, Kaithal while deciding Criminal Revision No.4 of 2016, decided on 14.02.2017. This revision was filed against the order, dismissing the complaint filed for seeking summoning of the plaintiff-appellant. Counsel wishes to refer to the observations made by the court in support of his case.

This court considers that such observations made by the learned Additional Sessions Judge, while dismissing the revision petition cannot be said to be findings of fact. This is not a judgment passed by the court while

deciding criminal appeal. Even a final judgment passed by a criminal court after trial is not binding on the civil court.

Learned counsel for the appellant, although, argued the case very sincerely, however, could not point out any perversity or substantive misreading or non-reading of evidence by the courts below. Hence, 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.

September 07, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No