

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.354 of 2016 (O&M)
Date of decision: 09.10.2018

Banwari Lal

..... Appellant

Versus

Manmohan Soni

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Kashika Kaur, Advocate, for
Mr. Gaurav Chopra, Advocate for the appellant.

Mr. A.K. Khunger, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell and for permanent injunction.

Plaintiff filed a suit on 04.09.2008 with the assertions that the defendant had entered into an agreement to sell with him on 08.12.2007 for a total sale consideration of Rs.6,80,000/-, out of which, Rs.1,50,000/- was received as earnest money and the date for execution and registration of the sale deed was fixed as 08.06.2008. It is further pleaded case of the plaintiff that the defendant received additional amount of Rs.2,97,000/- on 07.01.2008 and the agreement to sell was notarized from Sh. MPS Tinna on 11.12.2007. It is further pleaded case of the plaintiff that the defendant had previously raised a loan from Oriental Bank of Commerce and mortgaged this property. In order to pay off the loan, the amount of earnest money was received by the defendant and deposited in the bank.

The defendant contested the suit and pleaded that the agreement to sell is forged and fabricated. He pleaded that Rs.1,50,000/- was borrowed and signatures on the blank paper were obtained. It was further pleaded that the amount of Rs.1,50,000/- had been repaid but the documents were not handed over.

Both the Courts after examining the evidence have concurrently found that the agreement to sell was executed by the defendant-appellant voluntarily and the plaintiff is proved to be ready and willing to perform his part of the contract.

Learned counsel for the appellant has submitted that one attesting witness namely Aman Kumar is proved to have signed the agreement to sell after attestation by the notary public. Scribe of the agreement to sell has not been examined. The Court wrongly shifted the onus on the defendant to prove that no agreement to sell was executed. On the other hand, learned counsel for the respondent-plaintiff has pointed out that the defendant-appellant on receipt of additional amount of Rs.2,97,000/- has purchased a property in the name of his wife and the aforesaid sale deed has been produced on file.

This Court has considered the submission and gone through the record apart from the judgments of the Courts below.

In the present case, the signatures on the agreement to sell are not being disputed. It is only claimed that the aforesaid document was blank when the signatures were obtained. The agreement to sell is executed on three pages of non-judicial stamp paper of Rs.100/- each. Each page is signed by the defendant-appellant. On first two pages, the signatures are in the margin towards the end of the page whereas on page No.3, the signatures are where type written material comes to an end. Still further, on 07.01.2008, defendant-appellant has signed admitting receipt of additional amount of

Rs.2,97,000/- . Once the signatures on the agreement to sell are admitted, the Courts have rightly shifted the onus on the defendant to prove that there was no intention to sell the property. Still further, if there was no intention to sell the property, there could not be any further payment of Rs.2,97,000/- on 07.01.2008.

As regards contention of learned counsel for the appellant that Aman Kumar, the sole attesting witness has signed subsequently, it would be noted that the agreement to sell is not required to be attested by attesting witnesses. Even if evidence of Aman Kumar is ignored, the agreement to sell is proved by examination of PW-2, notary public Sh. M.P.S. Tinna. He has stated that the defendant-appellant had also put his signatures in his register. As regards contention of learned counsel that the scribe has not been examined, once there was a written document which is not required to be attested by law, examination of scribe cannot be said to be necessary in the facts of the present case. In the facts and circumstances of the present case, once it has been proved that Rs.1,50,000/- on one occasion and Rs.2,97,000/- on second occasion have been paid and the defendant-appellant has signed the document, there is no substance in the argument of learned counsel for the appellant.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

09.10.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No