

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

RSA No.4165 of 2016 (O&M)

Date of decision : 27.07.2018

Kulvir Singh and others

...Appellants

Versus

Jaspal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for recovery of ₹17,50,000/- alongwith interest at the rate of 6% p.a.

The plaintiff claims that Late Sh. Chajju Singh for himself as well as on behalf of Jagdish Singh, his brother had entered into the agreement to sell on 27.12.2005 and paid ₹10,00,000/- as earnest money. It is further pleaded case of the plaintiff that subsequently ₹7,50,000/- was also paid to Chajju Singh in the presence of his son Kulvir Singh on 06.01.2006 and Kulvir Singh had also signed the aforesaid receipt apart from the thumb impression affixed by Chajju Singh. In the present case, the defendants-appellants took contradictory plea. In the initial part of the

written statement, the execution of the agreement to sell was totally denied, however, in later part, it was pleaded that the plaintiffs were never ready and willing and additional amount has not been received. The defendants further pleaded that the agreement to sell was cancelled through notice dated 11.07.2006.

Both the Courts below after examining the evidence have found that the agreement to sell in which receipt of ₹10,00,000/- is acknowledged as also the receipt proving the additional payment of ₹7,50,000/- has been proved on file. The Courts have further found that the defendants had been mortgaging the property and created a charge on the property which was agreed to be sold. In these circumstances, the Courts have recorded a concurrent finding that the plaintiff is entitled to refund of ₹17,50,000/-.

Learned counsel for the appellants has submitted that although the amount of ₹10,00,000/- was paid, however, the payment of ₹7,50,000/- is not proved. The receipt Ex.P2 dated 06.01.2006 is proved on file. No evidence has been produced by the defendants-appellants to prove that the receipt is either forged or fabricated. At the cost of repetition, it may be noticed that the receipt is thumb-marked by Late Sh. Chajju Singh and his son Kulvir Singh. Kulvir Singh. Apart from denying his signatures on the receipt did not lead any evidence to prove that the signatures on the receipt does not belong to him.

Learned counsel for the appellants has further argued that since the suit was filed after a long lapse, therefore, it must be assumed that the agreement to sell had come to an end. He further drew the attention of the Court to the notice sent by the defendants-appellants dated 11.07.2006. In

the present case, this aspect has been examined by the Courts below and have found that the defendants are guilty of being not fair to the Court. On the one hand, they deny the very execution of the agreement to sell and on the other hand, they take a stand that the agreement to sell was executed and the earnest money of ₹10,00,000/- was received but additional amount has not been received. Still further, it has come on record that the defendants have been creating a charge over the property, although, they had already agreed to sell the property.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

27.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No