

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

RSA No. 4513 of 2016

Date of decision : 02.05.2018

Hitender

...Appellant

versus

Anita (deceased) through LR Jai Deep

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

RITU BAHRI, J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-appellant (herein after to be referred as 'the appellant') for specific performance of agreement to sell dated 05.09.2007, has been dismissed.

The suit filed by the appellant was dismissed by both the Courts below on the ground that firstly the defendant-Anita (since deceased) was suffering from seizure epilepsy. She was got treated at Dalal Hospital, Sonipat. The appellant has not examined any other attesting witness except Om Parkash who was found to be related with the appellant. The agreement to sell was not written on regular stamp paper, rather special adhesive stamp is reflected to be affixed on a plaint paper, which is reflected to be purchased by Anita. The appellant has also not examined the scribe of the agreement to sell nor examined the stamp vendor. The appellant has examined P.W.3 Nafe Singh, Notary Public, in whose register the agreement to sell was scribed but in his cross examination he admitted that he did not

know by whom the agreement was scribed. He further admitted that he did not know the parties to the agreement. He further admitted that the register maintained by him is having blank space at Page No. 89 and 91 and that the entries bearing No. 7432-7433 are missing.

Further the agreement to sell was shown to be executed at Gohana but the suit land was situated within the jurisdiction of Tehsil Ganaur and the Sub Registrar used to sit at Ganaur and there is a distance of more than 50 kms between these two places. The appellant has further failed to place on record any cogent evidence that how he had arranged such a huge amount of Rs.20 lacs.

After hearing learned counsel for the appellant and going through the impugned judgments, the appeal is liable to be dismissed.

It is not in dispute that Anita was suffering from seizure epilepsy and was getting treatment for her illness. The appellant is real brother of Anita. She resided with him for one year and he got her treated at Dalal Hospital, Sonapat. The learned trial Court vide order dated 11.04.2009 directed the Director of PGIMS, Rohtak to constitute a Board of Directors to examine Anita medically qua condition/fitness of Anita and as per report, she was suffering from epileptic disorder with mesial temporal lobe sclerosis with dandy walker syndrome in MRI and her IQ was found to be borderline intellectual functioning and with such IQ she cannot understand the intricacies of legal issues.

Even prior to the agreement to sell, the appellant had kept Anita in her custody and father of the respondent had moved an application before SDM Ganaur for issuing such warrant.

Once Anita was not in sound disposing mind, both the Courts below have rightly dismissed the suit of the appellant.

The finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

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

The appeal is dismissed.

02.05.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No