IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.3176 of 2015 (O&M)
Date of Decision:02.07.2018

Jita Singh

...Appellant

Versus

Jasvir Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Manish Kumar Singla, Advocate for the appellant.
Mr.Ashish Verma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for possession by way of specific performance of the agreement to sell dated 21.10.2004.

The plaintiff filed a suit with the assertion that the defendant had agreed to sell the suit land for a total sum of Rs.8,86,428/- and received Rs.1,25,000/- as earnest money on 21.10.2004. As per agreement to sell, the sale-deed was to be executed and registered on 21.10.2005. It is further pleaded that on 28.4.2005, the defendant received further sum of Rs.1,00,000/- and a note in this regard was recorded on the overleaf of the agreement. It is further pleaded that the defendant received a sum of Rs.3,50,000/- on 14.6.2005 and date for execution and registration of the sale-deed was extended to 28.8.2007. The plaintiff further pleaded that a legal notice was issued to the defendant but there was no reply.

The defendant contested the suit and pleaded that the agreement to sell and the endorsements are forged and fabricated and do not bear his thumb impressions.

Both the courts below after examining the evidence available on the file, decreed the suit after recording a finding that agreement to sell has been proved through evidence of the marginal witness and payment of money at various stages, i.e. on 21.10.2004, 28.4.2005 and 14.6.2005 have been proved.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that since agreement to sell runs into three pages and pages no.1 and 2 are not signed by any of the party, therefore, the same is doubtful. He has further submitted that thumb impressions on the agreement to sell which have been marked as Q1 is in fact superimposed and therefore, the suit for specific performance of the agreement to sell on that basis could not be decreed.

On the other hand, learned counsel for the respondent has pointed out that the appellant has not only thumb marked on 21.10.2004 but also thumb marked on 28.4.2005 and 14.6.2006. He has further submitted that the plaintiff has got compared his thumb impression from Fingerprint and Handwriting Expert, whereas the defendant has not examined any Fingerprint and Handwriting Expert in respect to prove his case.

This Court has considered the submissions.

As regards first submission of learned counsel for the appellant, it will be noted that no doubt first two pages of the agreement to sell are not signed by any of the parties, however, the stamp papers which have been purchased for execution of the agreement to sell is under one serial number, i.e. 3537. The last page of the agreement to sell has been thumb marked and signed by the parties as also by the marginal witness.

Still further, the appellant has put his thumb impressions at two more places, i.e. on the back page of the agreement to sell when the date was extended and further payment was received. Since the defendant has not led any evidence to prove that the agreement to sell is forged and fabricated, merely because first two pages of the agreement to sell have not been signed by the parties, the agreement to sell does not become doubtful particularly in the peculiar facts of the case when the defendant has not led any evidence apart from examining himself.

Next argument of the learned counsel for the appellant is that the plaintiff was not having sufficient means to pay the amount. He, while drawing attention of the court to cross-examination of the plaintiff, has submitted that the plaintiff has stated that approximately Rs.6,00,000/- was available in his accounts. In this regard, it may be noticed that the defendant-appellant had been receiving the amount on various occasions. First payment of Rs.1,25,000/- was received on 21.10.2004, whereas additional payment of Rs.1,00,000/- was received on 28.5.2005 and thereafter the appellant received a sum of Rs.3,50,000/- on 14.6.2005. In such circumstances, balance payable comes to Rs.3,11,428/-.

No other argument was raised.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. The Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of.

02.07.2018 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No