

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

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RSA 3550 of 2015 (O&M)  
Date of decision: 14.03.2018

*Des Raj* ..... *Appellant*  
*Versus*  
*Baisakhi Ram* ..... *Respondent*

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Hitesh Kumar Sammi, Advocate  
for the appellant

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**Rekha Mittal, J.** (Oral)

The present appeal directs challenge against consistent findings recorded by the Courts whereby suit filed by Baisakhi Ram (respondent herein) for specific performance of agreement to sell dated 20.12.2006 in respect of land measuring 10 kanals, detailed in para 2 of the judgment of the trial Court has been decreed and the appellant/defendant was directed to execute sale deed within a period of two months from the date of decision on receipt of remaining sale consideration, failing which, the respondent/plaintiff was entitled to get execute sale deed on payment of balance sale consideration. A decree for permanent injunction restraining the appellant from alienating the suit land till execution of sale deed was also passed. The first appeal preferred by the appellant/defendant did not find favour with the Additional District Judge, Kaithal whereby findings recorded by the trial Court have been affirmed.

Counsel for the appellant would urge that there were various transactions between the parties prior to alleged execution of agreement (Ex.P3). As a matter of fact, the appellant/defendant was to execute a mortgage deed in favour of the respondent/plaintiff but the respondent by taking advantage of illiteracy of the appellant prepared an agreement to sell, therefore, discretion exercised by the Courts granting relief of specific performance of agreement is not well founded.

I have heard Counsel for the appellant and perused the paper book particularly the judgments passed by the Courts.

Be that as it may, it is undisputed position in law that the Court in second appeal cannot re-appreciate evidence nor can set aside consistent findings recorded by the Courts merely because a different view than what has been held by the Courts, is possible. Equally settled is that regular second appeal can be admitted for hearing in case it gives rise to a substantial question of law that requires adjudication after hearing the contesting party.

The appellant/defendant has raised a plea that agreement (Ex.P3) has been prepared by taking advantage of his illiteracy as there were number of transactions between the parties prior to agreement. However, the agreement not only bears thumb impression(s) of the appellant but is also thumb marked by his son. Once the appellant has admitted his thumb impression(s) on the agreement, it was obligated upon him to establish by leading cogent and convincing evidence as to the circumstances under which he and his son thumb marked the agreement. The Courts have negated plea of the appellant that agreement is the result of

misrepresentation or fraud when otherwise, fraud is required to be proved by leading evidence beyond shadow of doubt. Counsel for the appellant has failed to point out any material on record to say that judgments passed by the Courts suffer from perversity or the Courts have failed to take into consideration evidence which has material bearing on determination of the issues framed by the trial Court. In this view of the matter, contention raised by counsel is not meritorious and liable to be rejected.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*.

No order as to costs.

(Rekha Mittal)  
Judge

14.03.2018  
mohan bimbura

Whether speaking/reasoned: Yes/No  
Whether reportable : Yes/No