

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

RSA No.6147 of 2016

Date of Decision.18.05.2018

Balwinder Singh

...Appellant

Vs

Rekha Rani

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chanan Singh, Advocate
for the appellant.

-.-

AMIT RAWAL J.(ORAL)

The appellant-defendant is in regular second appeal against the concurrent finding of fact whereby the suit for specific performance and alternative relief has been decreed by granting discretionary relief in respect of the suit land by both the Courts below.

Mr. Chanan Singh, learned counsel appearing on behalf of the appellant-defendant submitted that the respondent-plaintiff instituted the suit claiming specific performance of agreement to sell dated 02.05.2005 in respect of the land measuring 4 kanals 0 marla as described in the plaint against the receipt of earnest money of ₹1,95,000/-. The stipulated date for execution and registration of the sale deed was 30.04.2007, which was extended to 30.04.2008 having a valid endorsement. The plaintiff stated to have served legal notice dated 8.4.2008 upon the defendant for appearance before the Registrar on 30.04.2008.

The aforementioned suit was contested by the defendant on the premise that the plaintiff was the real sister of the defendant

and his signatures were obtained by fraud and mala fide with bad intentions.

The trial Court on the basis of aforementioned evidence decreed the suit by observing that the defendant failed to prove the ingredients of fraud and misrepresentation or circumstances in which his thumb impression or signatures on the alleged agreement to sell were obtained. The appeal laid before the lower Appellate Court was also dismissed.

He submitted that the Courts below ought not to have decreed the suit, for, the respondent-plaintiff had not been ready and willing to perform his part of the agreement and therefore, there is illegality and perversity. There was an inordinate long period of 26 months in between the date of execution of the agreement and execution of sale deed. Both the Courts below did not appreciate the alternative relief of recovery of ₹1,95,000/ i.e. ₹1,15,000/- by way of refund of earnest money and ₹80,000/- as interest accrued on the same. PW2 and PW3 also did not prove execution of the agreement to sell. The plaintiff did not even got the disputed thumb impression as compared and examined with specific thumb impression through expert, therefore, adverse inference was liable to be drawn.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chanan Singh. Once the plaintiff did not deny the factum of thumb impression on the document in the manner and mode the same appended, it was required to be explained by the defendant himself. No evidence has been brought on record. On the

other hand, attesting witnesses proved the passing of earnest money as well as execution, much less, by proving attestation of the agreement. The plaintiff has also proved Ex.P5 and affidavit Ex.P6 submitted before the Sub Registrar. If at all, the defendant had not executed the agreement to sell, the legal notice dated 08.04.2008 sent by registered post could have been replied in the line of defence taken in the written statement. The appellant-defendant had not been able to prove the pleaded case vis-à-vis direct and cogent evidence.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below. The argument of Mr. Chanan Singh has not been able to cut ice enabling this Court form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 18, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No