

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

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RSA No.2382 of 2014 (O & M)
Date of Decision:23.04.2018

Nishan Singh

...Appellant

Versus

Kashmir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Gupta, Advocate
for the appellant.

Mr. B.S. Jaswal, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell dated 01.12.2004. The execution of the agreement to sell has been proved on file by examining son of the scribe Rajan Kumar PW-3, attesting witness Surjit Singh as PW-1 and Neeraj Kumar, stamp vendor, as PW-2.

Both the Courts on appreciation of evidence have found that the agreement to sell is proved and the plaintiff was always ready and willing to perform his part of the contract.

Learned counsel for the appellant has submitted that other attesting witness of the agreement to sell was father of the defendant-appellant and he has deposed that the agreement to sell was not executed and there was no intention to sell the property, hence, it is established that not only the defendant had signed the agreement to sell but his father had also signed the agreement.

prove that the agreement to sell does not bear the signatures of the defendant-appellant.

Defendant-appellant has pleaded that he had given his land on lease to the plaintiff and his signatures were obtained under the pretext of payment of the lease money. The argument of learned counsel for the appellant does not have any substance. First of all, the lease money is not paid by writing an agreement to sell. At the most, lease money would be received by executing a receipt. In the present case agreement to sell has been executed and the same is also signed by the father of the defendant-appellant.

Learned counsel for the appellant has further argued that the land has been alienated by the defendant on 30.05.2006.

The sale of the land during the pendency of the suit would be governed by rule of lis pendens. In the present case, execution of the agreement and payment of earnest money has been proved. It is further proved on file that the plaintiff was always ready and willing to perform his part of the contract. Before filing the suit, he served a notice on the defendant to come and execute the sale deed on 12.12.2005. He got his presence marked and thereafter immediately filed the suit on 12.01.2006.

In view of the aforesaid, there is no good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular second appeal is dismissed.

All the pending miscellaneous applications shall also stand disposed of.

23.04.2018
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(ANIL KSHETARPAL)
JUDGE