

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

RSA No.2619 of 2014 (O&M)

Date of decision : 07.12.2018

Parkasho Devi and others

...Appellants

Versus

Gian Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nonish Kumar, Advocate for the appellants.

Mr. Sanjiv Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.18303-C of 2018

Application is allowed. Although, prayer in the application is for grant of stay, however, with the consent of the learned counsel for the parties, the main appeal itself has been taken on board and the arguments have been heard.

Main case

The defendant through his LRs have filed the present appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit filed by the plaintiff-respondent for possession by way of specific performance of the agreement to sell with respect to the land measuring 16 kanals.

The defendant denied the execution of the agreement to sell but

pleaded that his signatures were taken under the pretext that the agricultural land measuring more than 11 acres is to be taken on lease for a period of two years. Thus, the signatures on the agreement to sell are not disputed.

On appreciation of the evidence, particularly the evidence of two marginal witnesses of the agreement to sell, both the Courts have recorded the concurrent findings that the agreement to sell, receipt of earnest money and readiness and willingness of the plaintiff to perform his part of the contract stand established.

This Court has heard the learned counsel for the parties at length.

Learned counsel for the appellant submitted that the agreement to sell was got signed under the pretext that the property measuring more than 11 acres is being taken on lease. A photocopy of the agreement to sell has been produced. The agreement to sell has been scribed on ₹100/- stamp paper which is used for the execution of the agreement to sell. Each page has been signed by defendant-Main Pal who is now represented by his legal heirs. On left hand margin of the first page, Main Pal with his own hand written that he has received ₹7,00,000/- on 21.07.2008. Still further, at second page, Main Pal has not only signed the agreement to sell but has also signed on the revenue stamp pasted on the agreement to sell. Still further, the target date for the execution and registration of the sale deed was extended from 20.05.2009 to 30.12.2009. There is a separate writing on the reverse of the first page of the agreement to sell. This writing has again been signed at two places by the predecessor of the defendant.

Learned counsel for the appellant further submitted that the

marginal witnesses were the friends/close relatives of the purchaser.

In the considered view of this Court, the marginal witnesses have to be known to one party or the other only then normal marginal witnesses would sign. In any case, the agreement to sell is not required to be attested by the attesting witnesses. Once, the defendant does not dispute his signatures, it was for the defendant to establish that the agreement to sell was result of any misrepresentation. Still further, the agreement to sell is typed in Devnagri (Hindi) and Main Pal has also signed in the same language. It has further been brought to the notice of this Court that Main Pal was Nambardar of the village. Still further, Jagat Ram, marginal witness No.1 is relative of late Sh. Main Pal-defendant No.1.

Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

07.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No