

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

**(1) RSA No.6915 of 2016 (O&M)
Date of Order:01.08.2018**

Ajmer Singh(since deceased) through LRs

..Appellant

Versus

Dayal Singh and others

..Respondents

(2) RSA NO.6157 of 2016 (O&M)

Ajmer Singh(since deceased) through LRs

..Appellant

Versus

Dayal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Dinarpur, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

This judgment shall dispose of Regular Second Appeal No.6915 and 6157 of 2016 as both are arising out of the same suit disposed of by common judgment passed by the courts below.

Defendant no.1-appellant is in the regular second appeal against the decree for recovery on account of refund of earnest money of Rs.1,80,000/- along with interest while refusing relief by way of specific performance of the agreement to sell.

In the present case, plaintiffs pleaded that the agreement to sell dated 28.11.1998 under which out of total sale consideration of

Rs.2,00,000/-, Rs.1,80,000/- was received as earnest money. Defendant no.1-appellant denied execution of the agreement, however, pleaded that Sarpanch had got his signatures on the pretext of the land to be demarcated. He further pleaded that he had signed the typed papers.

During the pendency of the suit, defendant no.1-appellant sold the property in favour of defendant no.2, who pleaded that he is a bonafide purchaser.

Both the courts after examining the evidence have found that the agreement to sell is proved. However, keeping in view the time gap between the agreement to sell and the suit, which is approximately 7½ years, courts ordered refund of the earnest money. The courts have further noticed that the defendant no.1-appellant did not lead any evidence to prove that his land was having a common boundary with the land of the Gram Panchayat or the Sarpanch. In these circumstances, the Courts have found that the plea taken by the defendant no.1-appellant does not have any substance. An agreement to sell has been proved by examining the marginal witness Om Parkash, whereas other marginal witness had died.

Learned counsel for the appellant has produced before this Court a photocopy of the agreement to sell, which has been executed on a plain paper having Rs.3/- non judicial adhesive stamp. He submitted that the agreement on a plain paper which has been converted into agreement to sell later on.

On careful perusal of the agreement to sell, it is apparent that the non-judicial stamp paper bearing adhesive stamp was issued by a stamp vendor for the purpose of execution of the agreement. The agreement to sell is dated 28.11.1998, whereas the stamp paper was purchased a day prior i.e.

27.11.1998. It is normal that whenever the non judicial stamp papers of smaller denominations are not available and such non judicial stamp papers are issued in place of printed regular non judicial stamp papers.

In view of the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

August 01, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No