

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

(174) RSA-1179-2017
Date of Decision: October 30, 2018.

Babil	Versus	..Appellant
Balu Ram and another		..Respondents

(2) RSA-2342-2017

Ram Bai	Versus	..Appellant
Balu Ram and another		..Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sandeep Thakan, Advocate,
for the appellant in RSA-1179-2017.

Mr. Sohan Singh Thakur, Advocate, for
Mr. Virender Rana, Advocate,
for the appellant in RSA-2342-2017.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1179 and 2342 of 2017 preferred by defendant No.1 and defendant No.2 against the concurrent findings of the fact whereby the suit of the respondents-plaintiff for specific performance for agreement to sell dated 04.07.2007, has been decreed.

The suit aforementioned was filed for seeking specific performance of land measuring 13 kanals 14 marlas agreed to be sold for a total sale consideration of Rs.5 lacs against the payment of Rs.2 lacs as earnest money. The stipulated date for execution, registration of the sale deed was 15.09.2007. However, during the subsistence of the agreement to sell, defendant No.1 sold the land in dispute to defendant No.2 vide sale deed dated 19.07.2007. Defendant No.1 contested the suit by blaming the

plaintiff to be a clever person and affixation of the signatures on the agreement, on the ground of having been kidnapped. There was no agreement or intention to sell the land. In fact, he agreed to sell it to defendant No.2 as per sale deed dated 19.07.2007.

Respondent-plaintiff in support of the pleadings examined PW-3 Partap Singh, deed writer, PW-2 Surender Singh, Branch Manager, regarding opening of the bank account, himself as PW-1, PW-4 Balbir and closed the evidence. On the other hand, defendant No.1 examined himself as DW-1, DW-2 Prahlad Singh, deed writer of the sale deed dated 19.07.2007, DW-3 Om Parkash Kadwasra, Advocate to prove the attestation of sale deeds Ex.D-1 and Ex.D-2 and two other witnesses DW-4 Ashok Kumar and DW-5 Satpal. Thereafter, Jai Singh, power of attorney of defendant No.2 appeared to produced evidence. On the basis of the evidence brought on record, the trial Court found as respondent-plaintiff had been ready and willing to perform his part of contract, decreed the suit.

Learned counsel appearing on behalf of the appellant(s) submitted that defendant No.2 is bona fide purchaser for valuable consideration. The respondent-plaintiff did not have any sufficient money for performance of the contract. It was clever planning to grab the property by playing fraud upon defendant No.1. The agreement to sell has not been proved as no source of purchase of stamp papers has been brought on record. Neither any attesting witness of the agreement to sell had been examined, therefore, discretionary relief under Section 20 of the Specific Relief Act cannot be granted.

I have heard the learned counsel for the appellants and of the view that the aforementioned arguments is not sustainable as neither any

criminal case against the plaintiff nor any effort to belie the signatures on the agreement was ever made.

It is a case of admission of the signatures on the agreement but the circumstances had not been proved. Had there actually been a case of kidnapping, no sane person would have kept silent but pushed the police to the corner for registration of FIR if otherwise would have filed the criminal complaint. No expert in this regard has been examined to deny the signatures.

In such circumstances, non-examination of the attesting witnesses could not be fatal for exercising the discretion. Defendant No.2 has also not been able to come in the expression of “Bonafide Purchaser” as the sale deed executed in his favour was in undue haste.

I do not find any illegality and perversity. No ground is made out for interference.

Both the appeals are dismissed.

October 30, 2018.
harsha

(AMIT RAWAL)
JUDGE

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