

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

RSA No.1346 of 2017 (O&M)

Date of decision: 16.07.2018

Bhagwan Dass

..... Appellant

Versus

Satpal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harsh Kinra, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

A suit for possession by way of specific performance of the agreement to sell has been decreed by both the Courts below. It will be noted that as many as 18 co-owners executed a joint agreement to sell dated 01.03.2005 in favour of the plaintiffs with respect to the land measuring 3 bighas and 11 biswas. It is not in dispute that 17 out of 18 co-owners who are inter se related have already executed sale deeds with respect to their share in favour of the plaintiffs.

Learned counsel for the appellant has submitted that the Courts below have wrongly interpreted agreement to sell. He has further submitted that the decree passed by the Court is vague as the property has not been identified. He has further submitted that there is misreading of evidence of handwriting and fingerprint expert. He has further submitted that the

application for additional evidence filed under Order 41 Rule 27 CPC before the learned First Appellate Court has been wrongly rejected.

This Court has considered the submissions, however, find no substance therein.

Learned counsel while referring to Clause 9 of the agreement to sell, submits that the demarcation as provided in the clause has not been carried out and therefore, it is not known as to how much area would be saleable. This Court has examined the contention. First of all, it was for the first party i.e. vendors, who were to get the land demarcated. Admittedly, first party did not get the demarcation carried out. Still further, as per agreement to sell, the total land agreed to be sold is 3 bighas and 11 biswas comprised in various khasra numbers mentioned in the agreement to sell. As noticed earlier, 17 co-owners have already executed the sale deed. In such circumstances, this Court does not find that the agreement to sell has been wrongly interpreted. Similarly, with regard to identification of the land, it will be noticed that description of the land has been given with khewat, khatoni and khasra numbers while referring to Jamabandi for the year 1997-98. In these circumstances, it would not be proper to hold that the property has not been identified.

Next argument of learned counsel for the appellant is that there is misreading of evidence of handwriting and fingerprint expert. It will be noted that in the present case, the agreement to sell is attested by two attesting witnesses. One of them has been examined namely Rajender Katyal as PW-4. Further, a co-vendor namely Satbir and a co-owner namely Suraj Saini have also been examined. Once direct evidence is available, the opinion of handwriting and fingerprint expert cannot be given

preference.

Last submission of learned counsel is with regard to wrong dismissal of application under Order 41 Rule 27, CPC by the learned First Appellate Court. Through the additional evidence, the appellant wanted to produce the information gathered by him, under Right to Information Act with regard to correctness of diploma of handwriting and fingerprint expert examined by the plaintiff. In the considered opinion of this Court, even if this evidence is considered, once this Court is not relying upon the opinion of the handwriting and fingerprint expert, allowing or disallowing of application for the additional evidence would not help the appellant.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

16.07.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No