

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

**RSA No.1523 of 2018(O&M)
Date of Decision:02.04.2018**

Hansa Singh

...Appellant

Versus

Devinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Marwaha, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 03.01.2004, allegedly executed by defendant no.1 in favour of the plaintiff with respect to 14 biswas of land. Plaintiff had also challenged the sale deed dated 24.03.2004 executed by defendant no.1 in favour of defendants no.2 and 3. Plaintiff also prayed for a decree for permanent injunction restraining defendants no.2 and 3 from alienating, transferring, mortgaging and selling the property in any manner.

In the written statement, execution of the agreement to sell was denied.

Plaintiff appeared through his next friend i.e. Son Balwinder Singh, who was appointed by the Court. However, after tendering affidavit in examination-in-chief, next friend of the plaintiff did not appear for cross-

examination. Hence, his statement was rightly not read in evidence. Both the courts have noticed that PW1 did not come forward for facing cross-examination despite of availing several opportunities. Plaintiff also examined PW3 Balbir Singh, scribe of the agreement to sell, who has stated that the thumb impressions were not taken in his presence and the words “LTI “ were not written in his presence. He has also admitted that the plaintiff or his son were also not present at that time. The scribe has also admitted that spacing between the lines on both the pages are different. It has also come in evidence that the scribe has also stated that the plaintiff Hansa Singh had not paid the amount of earnest money in his presence. Even PW4 Didar Singh has also admitted that no amount was paid in his presence. With these findings, both the courts dismissed the suit filed by the plaintiff.

Learned counsel for the appellant has vehemently argued that if he is given one opportunity, the plaintiff would produce his son for cross-examination and thereafter the court could decide the case.

In this regard, it may be noticed that the issues were framed on 10.04.2007. Learned trial court closed the evidence of the plaintiff by order on 31.05.2012. Hence, the case remained pending for evidence of the plaintiff for more than 5 years. Plaintiff did not show his bonafide intention to produce his son Balwinder Singh in evidence enabling the other party to cross-examine the witness. Learned trial court cautioned the plaintiff while granting last opportunity before passing the order dated 31.05.2012.

Keeping in view the aforesaid facts, plaintiff now cannot be

granted opportunity to lead his evidence.

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

The regular second appeal is dismissed.

C.M.No.4035-C-2018

This appeal has been filed along with an application for condonation of delay of 1543 days in re-filing the appeal.

In view of the fact that the appeal has been dismissed on merits, no further order is required.

The misc. application is dismissed.

C.M.No.4036-C-2018

Allowed as prayed for.

April, 02, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No