

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

**R.S.A. No.2363 of 2017 (O&M)
Date of decision : March 15, 2018**

Harbhajan Singh

..... Appellant

Versus

Ravail Singh (since deceased) through LRs

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Surinder Thakur, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment dated 13.02.2017 passed by learned Addl. District Judge, Hoshiarpur, affirming the judgment and decree dated 11.03.2014 passed by learned Addl. Civil Judge (Sr. Divn.), Dasuya.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

A civil suit was filed by the respondent-plaintiff for possession of the house by way of specific performance of agreement to sell dated 21.02.2007. It was stated that the house was agreed to be sold for ₹7,00,000/-. Out of which ₹5,00,000/- were paid as earnest money. The balance was to be paid on or before 21.02.2008 and the sale deed was to be executed. Since 21.02.2008 happened to be a holiday, therefore, the plaintiff-respondent appeared before the Sub-Registrar on 22.02.2008 and got their presence marked. However, defendant did not appear.

The stand of the defendant in the written statement is that he did not execute the said agreement. He was in the need of money for the marriage of his daughter. Therefore, he requested the plaintiff for loan of ₹1,00,000/- on interest. The plaintiff got his signatures on blank and printed documents. Without knowing and understanding the nature and contents of thereof, he signed the same. It claimed that he returned the said loan of ₹1,00,000/- along with interest of ₹1,00,000/-.

From the pleadings, following issues were framed:

“1) Whether the defendant executed an agreement to sell dated 21-2-2007 in favour of the plaintiff on receipt of ₹5 Lac as alleged? OPP

2) Whether the plaintiff remained ready and willing and is still ready and willing to perform his part of the contract? OPP

3) Whether the plaintiff is entitled to the possession of the suit property by way of specific performance of the agreement to sell in question? OPP

4) Whether the suit is not maintainable? OPD

5) Whether the plaintiff has no locus standi to file the present suit? OPD

6) Whether the plaintiff has concealed the actual and factual facts from the court? OPD

7) Whether the suit is liable to be dismissed with special costs under Section 35-A of CPC? If so to what extent? OPD

8) Relief.”

The trial Court after considering the statements of the plaintiff-deed writer, stamp vendor as well as the attesting witnesses came to the conclusion that the agreement was duly executed. The stand of the defendant was disbelieved and the suit was decreed. It was also found that

the defendant not only signed on every page of the agreement but also signed a writing that he has received ₹5,00,000/- and that the writing was read over to him and he admitted the same to be correct. The signatures under the said writing are not denied.

Learned counsel for the appellant states that the said paper was purchased for affidavit and that the writing of receipt of ₹5,00,000/- is not in his hand.

I am of the view that even if the stamp paper is purchased for one purpose and used for another purpose that would not mean that the agreement is illegal. The agreement has been duly proved including the writing by the defendant that he has received ₹5,00,000/-, which were the earnest money and he admitted the agreement to be correct. There are concurrent findings of two Courts below. No law point is involved in the present appeal. Thus, there is no ground to interfere in the findings recorded by two Courts below.

As such, the present regular second appeal is dismissed.

Since the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 15, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No