

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

RSA-2905-2017 (O&M)

Date of Decision: July 18, 2018

Rajiv and another

...Appellants

Versus

Jagdev Singh

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajesh Bhardwaj, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

The defendants have filed this Regular Second Appeal against the judgments of the courts below whereby the suit of plaintiff has been decreed. The plaintiff had filed a suit for specific performance of agreement to sell dated 11.8.2010 and for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff etc.

The case of the plaintiff was that the defendants had entered into an agreement to sell dated 11.8.2010 with the plaintiff to the extent of their share in the suit property for a total sale consideration of Rs.20,000/-. The defendants received an amount of Rs.10,000/- as earnest money at the time of execution of the agreement. The remaining amount was to be paid to them at the time of execution of the sale deed on 11.8.2011. The plaintiff went to the office of the Sub-Registrar, Narnaul on 11.8.2011, the date fixed for execution of the sale deed along with the remaining payment and other

expenses but the defendants did not turn up. The plaintiff got his presence

marked before the Executive Magistrate.

The case of the defendants was that they had a dispute with their brother Karamjit. The plaintiff, who is their cousin on the maternal side, offered to effect a compromise between them which was to be reduced into writing after effecting amicable settlement. Taking advantage of their implicit faith in the plaintiff, he procured signatures of the defendants on some blank papers by misstating that the compromise was to be scribed thereupon. The said papers were later used to forge the agreement to sell. It was denied that any earnest money was paid by the plaintiff to the defendants. It was also pleaded that the suit property was ancestral and coparcenary and no valid agreement could be executed by the defendants in favour of the plaintiff without the consent of their third brother, Karamjit.

To prove his case, the plaintiff examined Anil Kumar, Stamp Vendor as PW-1. He deposed that stamp paper Ex.PW-1/A of the value of Rs.10/- dated 11.8.2010 was issued by him in the name of Rajiv, defendant No.1. He identified his own signatures and also the signatures of defendant-Rajiv on the backside of the stamp paper. PW-2 Ravinder Singh, Advocate deposed that he had made identification Ex.PW-2/A of the plaintiff on the Affidavit Mark 'A' of his attendance before the Sub-Registrar, Narnaul on 11.8.2011. Ashok Kumar PW-3 deposed that the agreement to sell dated 11.8.2010 had been executed by the defendants in favour of the plaintiff for a total sale consideration of Rs.20,000/- and the defendants had received Rs.10,000/- as earnest money from the plaintiff on the day of agreement. He deposed that the defendants had appended their signatures on the agreement.

the same had been scribed by him at the instance of the parties who thereafter signed the same after comprehending its contents. The plaintiff appeared as PW-5 and reiterated his case.

On behalf of the defendants, defendant no.2 appeared as DW-1 and reiterated the case of the defendants. In his cross examination, he admitted that the agreement PW-1/A bore his signatures at Mark-'A'. He also identified the signatures of his brother Rajiv at Mark- 'PB'. He also admitted that the writing at Mark-'PC' to the effect that Rs.10,000/- was received from the plaintiff and possession of the suit property was delivered to the plaintiff, was scribed by his brother, Rajiv defendant No.1.

The Ld. trial court on the basis of the aforesaid evidence, concluded that the plaintiff has been able to prove the execution of the agreement to sell. It was held that the defendants on the other hand had not been able to prove their case that the agreement was scribed on blank stamp papers where their signatures were procured by the plaintiff for entering the compromise between them and their brother Karamjit. The Court also noted that defendant No.1 who was the best witness to explain about the receipt of earnest money did not appear in the court. On the question of readiness and willingness of the plaintiff to perform his part of agreement, the Ld. Court held that he had proved the affidavit Ex.P-2/A, dated 11.8.2011 duly attested by the Executive Magistrate Narnaul, and identified by Advocate, Parminder Singh, which supported his case that he was present before the Executive Magistrate, Narnaul, on the appointed date i.e.,11.8.2011 for performing his part of the agreement.

Accordingly, the suit was decreed. The defendants were directed

to execute the sale deed in favour of the plaintiff within a period of three months of the judgment.

The Ld. Lower Appellate Court has affirmed the findings of the trial court.

Findings of fact have been recorded by the courts below. Ld. Counsel for the appellants has not been able to show as to how those findings are perverse or against the evidence on record. No substantial question of arises for decision in this case.

Accordingly, the appeal is dismissed.

July 18, 2018

(HARINDER SINGH SIDHU)

JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No