

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

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RSA No.5913 of 2014(O & M)
Date of Decision:01.02.2018

Raghbir Singh and another

...Appellants

Versus

Isham Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Aashna Gill , Advocate
for the appellants.

Mr. S.S. Dinarpur, Advocate with
Mr. Apoorav Sangwan, Advocate and
Mr. Parbhjot Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court and decreeing the suit filed by the plaintiff for possession by way of specific performance of agreement to sell.

Plaintiff had pleaded that defendant No.1 had entered into an agreement to sell on 23.06.2005 with respect to a piece of land measuring 9 marlas consisting of two plots and total sale consideration was paid at the time of agreement to sell. The agreement to sell is in writing and is duly thumb marked by defendant No.1. The agreement to sell runs into two pages, both the pages have been thumb marked by defendant No.1. First page bears one thumb impression whereas second page bears two thumb impressions.

Defendants contested the suit claiming that in fact he had thumb marked the document thinking it to be a pronote as he had borrowed a sum of Rs.50,000/- as a loan for the marriage of his daughter. Plaintiff in order to

prove the agreement to sell, examined himself as PW-1, whereas

attesting/marginal witness Rajinder Kumar was examined as PW-2, who was brother of the plaintiff. Plaintiff also examined PW-3 Krishan Kant Sharma, Notary Public, who proved that he had attested the agreement to sell and defendant No.1 had thumb marked in his register on 23.03.2005.

Learned trial Court by giving strange reasons, dismissed the suit whereas learned First Appellate Court after re-appreciating the evidence in the correct perspective, decreed the suit. Learned First Appellate Court has noticed that the defendants have been taking different stand. In the written statement, defendant No.1 pleaded that he had borrowed a sum of Rs.50,000/- for the marriage of his daughter and had executed the pronote whereas when he appeared in the witness-box, he stated that he had put his thumb impression for taking loan from the Bank. It is admitted fact that the plaintiff is neither an agent of the Bank nor its employee.

Still further, the defendant No.1 himself claims that Lakhwinder Singh, his first cousin, had accompanied him when he had thumb marked the agreement to sell dated 23.06.2005. It has come in evidence that Lakhwinder Singh has studied up to Class 6th and could read and write Hindi. The agreement to sell is in Hindi. Once it is proved that Lakhwinder Singh accompanying defendant No.1, the plea of fraud being taken by the defendants is unbelievable.

Learned First Appellate Court has also noticed that the defendant No.1 with a view to avoid execution of the sale deed transferred the property in favour of his wife by executing a sale deed.

Taking into consideration the overall facts, the learned First Appellate Court reversed the judgment of the learned trial Court and decreed the suit.

their able assistance gone through the judgments passed by the Courts below and the photocopy of the records produced before me.

Learned counsel for the appellants has reiterated the reasons given by the learned trial Court to dismiss the suit. This Court repeatedly asked learned counsel for the appellants to point out any legal error committed in the appreciation of evidence by the learned First Appellate Court. However, the counsel only submitted that the deal was totally improbable.

Learned counsel for the appellants has further submitted that it is proved on file that the agreement to sell was with respect to plots whereas two rooms have been constructed. Therefore, the agreement to sell does not depict the correct position.

I have considered the submission. However, I do not find any substance therein. The agreement to sell is in writing executed by the parties written in Hindi language. It is thumb marked by defendant No.1. Defendant No.1 was accompanying his cousin, who was able to read and write Hindi. Agreement to sell is also attested by a Notary Public, who has also made entry in his register. The construction on the plot is only of two rooms, which cannot be set to be substantive construction.

In view thereof, there is no scope for interference with the judgment passed by the learned First Appellate Court.

Hence, this regular second appeal is dismissed.

01.02.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No