

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-3527-2017 (O&M)
Date of Decision: 20.08.2018

Phool Kumar

--Appellant

Versus

Sandeep Sheokand & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Pankaj Mehta, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Defendant-appellant is in second appeal before this Court.

Plaintiff-respondent herein namely Sandeep Sheokand instituted a suit for possession of the suit property by way of specific performance of an agreement to sell dated 12.10.2007. Suit was decreed by the Trial Court on 29.7.2013 and a civil appeal having been preferred by the defendant, the same has been dismissed vide judgement dated 24.1.2017 passed by the learned Additional District Judge, Hisar and thereby affirming the judgement and decree of the Trial Court.

Counsel representing the appellant would submit that the suit property was a residential house and the courts below have erred in decreeing the suit as the alleged agreement to sell dated 12.10.2007 had never been entered into between the parties. It is argued that certain blank papers upon which the signatures and thumb impressions of the appellant had been obtained, were misused and a forged and fabricated agreement to sell had been set up. Counsel submits that no earnest money at any point of time had been entrusted by the respondent/plaintiff in favour of the present appellant.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

Concededly, appellant-defendant is not denying his signatures/thumb impressions on the agreement to sell dated 12.10.2007 Ex.P-1 as also the receipt Ex.P-3 and in terms of which a sum of Rs.3 lacs had been made over as earnest money. Stand taken on behalf of the appellant-defendant was that a forged and fabricated agreement to sell had been set up inasmuch as the signatures and thumb impressions appearing upon the documents at Ex.P-1 and P-3 were on blank papers and the same have been misused. In the backdrop of such stand having been taken, the onus was upon the defendant-appellant to have proved such plea by leading cogent and credible evidence. Counsel, during the course of arguments has not been able to advert to any documentary/oral evidence to substantiate the plea of fraud. The only reliance that has been placed upon by counsel is the deposition made by the defendant-appellant during the course of cross-examination where having earlier admitted his signatures and thumb impressions on Ex.P-1 and P-3, he attempted to set up a case of denial. The same would be of no consequence inasmuch as the plaintiff/respondent has discharged his onus of proving due execution of the agreement to sell dated 12.10.2007 as also the receipt of even date by examining PW-2 Sandeep Kumar, Scribe and PW-3 Pawan Kumar i.e. the attesting witness. Furthermore, as per agreement to sell dated 12.10.2007 the target date for execution of the sale deed was stipulated as 11.11.2007. 11.11.2007 being a holiday, the plaintiff-respondent had duly appeared in the office of the concerned Sub Registrar on the following date i.e. 12.11.2007 and got his

presence marked and which would be reflected from document Ex.P-4. Readiness and willingness on the part of the plaintiff-respondent would further be reflected upon issuance of legal notice Ex.P-5 to the defendant-appellant, acknowledgment Ex.P-6 and of having instituted the suit for specific performance immediately thereafter and without any delay on 9.1.2008.

The findings recorded by the courts below are well reasoned and upon due appreciation of oral and documentary evidence. No interference in the same is warranted.

Present appeal does not raise any question of law.

The appeal, accordingly, is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

20.08.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No