

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

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RSA-3359-2018 (O&M)

Date of Decision : 19.09.2018

Umed Singh and another

..... Appellants

Versus

Nafe Singh (since deceased) through LR.

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Surinder Garg, Advocate and
Mr. Surinder Gaur, Advocate
for the appellants.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment of the lower appellate court reversing that of the trial court and thereby dismissing a suit for specific performance filed by the appellants.

The case of the appellants was that Nafe Singh had agreed to sell land measuring 10 kanals 19 marlas situated at Loharu, District Bhiwani on 20.07.2012 for a total sale consideration of Rs.10 lakhs. The target date was fixed as 30.10.2012. It is stated that the appellants appeared before the Sub-Registrar on the target date but Nafe Singh did not appear. On 07.02.2013, the notice was issued to Nafe Singh. He died on 26.02.2013. Thereafter, his LR's replied to the notice and ultimately the present suit was filed. The appellants examined two witnesses and on the basis of that testimony, the trial court held that the agreement to sell was proved and

decreed the suit. In appeal, the lower appellate court noticed that there were pucca houses and tubewell on the suit land but there is no reference thereto in the sale agreement; both the attesting witnesses were close relatives of the appellants; the thumb impression appearing on the agreement to sell was indecipherable; one of the attesting witnesses admitted that the value of the property was Rs.15 lakhs per acre; once it was the case of the appellants that they had paid 70% of the total sale consideration amount, it was very strange that they did not take the possession thereof; the stamp duty on which the agreement to sell was scribed was not purchased by Nafe Singh; and the scribe was not examined. Consequently, the lower appellate court allowed the appeal and dismissed the suit.

Counsel for the appellants has argued that there was no occasion to disbelieve the eye witnesses.

In my opinion, this argument alone would not suffice. The findings recorded by the lower appellate court are based on circumstances and facts which cannot be taken to be irrelevant. In the totality of circumstances, counsel for the appellants has not been able to persuade me that the findings of fact recorded by the lower appellate court are either based on no evidence or based on such a perverse misreading of evidence so as to justify interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 19, 2018

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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No