

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

RSA No. 364 of 2018(O&M)

Date of decision: 6.3.2018

Har Parshad

....Appellant

VERSUS

Sant Ram

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Shiv Kumar, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the respondent/.plaintiff for specific performance of agreement dated 14.10.2011 with consequential relief of permanent injunction was decreed by the trial Court, appellant/defendant was directed to execute and register sale deed of suit land in favour of plaintiff on payment of balance sale consideration within one month and two months time was given to the appellant/defendant to execute the sale deed in favour of the respondent/plaintiff from the date of decree i.e. 3rd day of July, 2015. Findings recorded by the trial Court came to be affirmed in appeal by the Additional District Judge-I, Palwal.

Counsel for the appellant has assailed findings of the Courts on few counts. The first submission made by counsel is that the

respondent/plaintiff failed to adduce cogent and convincing evidence to prove that he had an amount of Rs.3.36 lakhs to pay towards earnest money at the time of execution of agreement of sale. He has not examined the person from whom he borrowed the amount of Rs.3.36 lakhs. The second submission made by counsel is that the respondent/plaintiff examined Kiran Pal PW-4 attesting witness to the agreement of sale but testimony of Kiran Pal cannot be relied upon being an interested witness who had stated that his daughter is married in the family of Sant Ram.

Another submission made by counsel is that as per case of the respondent/plaintiff, the agreement of sale Ex.P1 and receipt Ex.P2 were executed in the premises of Tehsil Office but there is no explanation as to why these documents were not got notarized from a notary public. The last submission made by counsel is that as the agreement of sale is a typed document, there was no reason for the deed writer to make an entry of the agreement in his register and the factum of recording an entry in the register is to be taken as a clever attempt on the part of respondent/plaintiff to create evidence in his favour. It has further been argued by counsel that evidence adduced by the respondent/plaintiff to prove the agreement of sale and receipt Ex.P1 and P2 gets sufficiently rebutted from the statement of Chanderpal son of Sarupa, another attesting witness of the agreement of sale who was examined by the appellant as DW-2.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to mention that in the Regular Second Appeal, the Court cannot re-appreciate the evidence and set aside consistent findings recorded by the Courts below merely on the ground that another view is possible from the evidence on record. On the contrary, second

appeal can be admitted for hearing if it gives rise to a substantial question of law that needs determination after hearing the parties in accordance with law.

Reverting to the case at hand, the respondent/plaintiff examined Chiranjee Lal, Nambardar, an attesting witness of the agreement Ex.P1 and receipt Ex.P2, Rakesh Kumar, deed writer PW-3, Kiran Pal another attesting witness of the agreement and receipt PW-4 and himself appeared in the witness box to establish his claim qua execution of agreement of sale and receipt Ex.P1 and P2, respectively, by the appellant/defendant. The mere fact that Kiran Pal PW-4 happens to be a relative of the respondent/plaintiff itself is not sufficient to discard or disbelieve his testimony much less to reject the other evidence consisting of testimony of Chiranjee Lal, Nambardar and Rakesh Kumar deed writer of the respondent/plaintiff to prove agreement of sale Ex.P1 and receipt Ex.P2. As per settled position in law, the Court has to appreciate the quality of evidence adduced by respective parties to decide civil dispute on the basis of balance of probabilities. In this view of the matter, I find myself unable to accept contention of the appellant that as Kiran Pal is related to respondent/plaintiff, findings recorded by the Courts suffer from error much less perversity. All the witnesses examined by the respondent/plaintiff to the agreement have consistently deposed that the respondent/plaintiff paid an amount of Rs.3.36 lakhs to the appellant towards earnest money on the day, agreement of sale was entered into. The respondent/plaintiff in his cross examination had stated that he had not withdrawn the amount of Rs.3.36 lakhs from his account in State Bank of India but has borrowed the amount from his family. The appellant has not

denied his signatures on the agreement but had raised a plea that his signatures were obtained on blank papers when he was under the influence of intoxicant (liquor). As soon as the appellant has admitted his signatures on the agreement, he is obligated in law to establish his plea by leading cogent and convincing evidence with regard to the circumstances under which he appended his signatures on the document.

Counsel for the appellant has not pointed out any materials on record to substantiate this plea of the appellant, therefore, contents of the agreement otherwise have to be accepted as it is. In this view of the matter, contention raised by counsel for the appellant in regard to non-payment of earnest money is unfounded and liable to be rejected. The other two submissions made by counsel for the appellant with regard to the agreement being not got notarized or there being no need to make an entry in the register of deed writer are highly misconceived and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

MARCH 6, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no