

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

RSA No.4518 of 2017 (O&M)

Date of decision : 06.09.2018

Jagjit Singh

...Appellant

Versus

Mohinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Paul Batra, Advocate for the appellant.

Mr. B.S. Sidhu, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM No.13637-C of 2018

Application is allowed, as prayed for.

Main case

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell dated 26.12.2014.

The defendant contested the suit and pleaded that he was working as a Manager in firm M/s J.B.S. Trading Company and the aforesaid document was signed as a security as the Firm use to borrow the amount from the plaintiff. It was further pleaded that the signature of the defendant was taken on the blank papers and the agreement has been forged

on the blank signed papers.

The defendant further pleaded that the plaintiff has filed two complaints against him under Section 138 of the Negotiable Instruments Act on account of dishonour of the cheque.

Both the Courts after examining the evidence have found that the agreement to sell is proved to have been executed by the defendant-appellant and it is a genuine agreement.

The Court further found that the defendant-appellant not only signed on non-judicial stamp papers purchased by him for the execution of the agreement to sell, worth ₹1,000/-, but he also signed in the register of the scribe. That is how the defendant-appellant is in appeal.

Learned counsel for the appellant has raised two contentions, first, there was a previous agreement to sell executed between the parties on 08.01.2014 which has not been disclosed by the plaintiff, and second, there may be a transaction of borrowing the amount, however, the agreement to sell was not intended to be acted upon.

On the other hand, learned counsel for the respondent has pointed out that the defendant-appellant himself admits that he visited the office of Sub-Registrar for execution and registration of the sale deed on 15.05.2015. However, in the subsequent sentence, he shifted his stand. He further pointed out that the defendant-appellant was not the Manager of the Firm after 31.08.2014 and, therefore, the plea taken by the appellant is factually incorrect.

This Court has considered the submission of the learned counsel. It is undisputed that the defendant while filing the written

statement did not plead about first agreement to sell. Anyhow the plaintiff when confronted with the aforesaid agreement to sell has explained that there was an earlier agreement to sell. However, since the defendant at that time had refunded the amount, therefore, the agreement to sell has come to an end. In these circumstances, particularly when the defendant-appellant is not an illiterate and was admittedly working as a Manager in the Trading Company, has executed an agreement to sell only signed by him, the onus is heavily upon him to explain how this agreement to sell was not intended to be acted upon or was in any manner executed only by way of security. It is not disputed by the learned counsel for the appellant that when the defendant-appellant appeared in the witness-box, he admitted that he went to the office of Sub-Registrar on 15.05.2015 i.e. the target date for execution and registration of the sale deed as agreed upon under the agreement to sell dated 26.12.2014.

Learned counsel for the appellant also does not dispute that the defendant-appellant had left the job in the Firm as Manager on 31.08.2014. Why the defendant-appellant has signed in the register of the scribe which remains totally unexplained.

With regard to the second contention of the learned counsel, although, it is not connected with the present suit, however, the aforesaid two complaints filed by the plaintiff show that there were various monetary transactions between the parties. However, merely because there were monetary transactions, an individual who has consciously executed an agreement to sell and even showed his willingness to execute the sale deed by visiting the Office of Sub-Registrar on 15.05.2015, i.e. the target date for

the execution and registration of the sale deed, he cannot be permitted to wriggle out of the agreement to sell by referring the criminal complaints filed under Section 138 of the Negotiable Instruments Act on account of dishonour of cheques which have no connection with the present agreement to sell.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No