

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

RSA No. 4161 of 2018 (O&M)
Date of decision : July 20, 2018

Surender Singh

..... Appellant

v.

Darshan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.P Bhandari, Advocate
for the appellant.

Ajay Tewari, J (Oral)

C.M No.11026-C of 2018

For the reasons recorded, this application is allowed and delay
of 27 days in refiling the appeal is condoned.

RSA No.4161 of 2018

This appeal has been filed against the judgment of the lower
appellate Court reversing that of the trial Court and thereby decreeing a suit
for recovery filed by respondent No.1/plaintiff.

The case of the plaintiff was that the appellant had entered into
an agreement to sell land measuring 1 kanal for a total consideration of ₹
9,12,500/- on 29.4.2009 and had received a sum of ₹ 1 lakh as earnest
money. The plaintiff further went to plead that the appellant had executed
the agreement to sell on the basis of an agreement to sell in his own favour

and later on when it transpired that the appellant was not in a position to execute the sale deed, he approached him to return his money. Since he did not do so, he filed the instant suit. On the other hand, the case of the appellant was of total denial. He denied that he owned the land (which fact is not disputed); he denied that he executed any agreement to sell; he denied that he received any money, and he further cast aspersions on the two attesting witnesses i.e Dimple Sharma and Rajinder Singh alleging in the written statement that they were part of a gang of cheats whose job was to dupe innocent persons of their property. During evidence, respondent No.1 appeared as his own witness and examined one of the attesting witnesses Dimple Sharma. In his evidence, the appellant examined Rajinder Singh (against whom he had levelled allegations) and Rajinder Singh also attested to the fact that the appellant had executed the agreement to sell in his presence and that he had attested the same.

The trial Court held that respondent No.1 was not able to prove his case primarily because the scribe was not examined; respondent No.1 had accepted that he knew that the appellant was not the owner, and because even the attesting witness examined by respondent No.1 had not stated that the consideration had passed in his presence. Consequently, the trial Court dismissed the suit.

In an appeal filed by respondent No.1, the lower appellate Court, however, held that merely because the scribe was not examined would not be germane in proving or otherwise the agreement to sell. The lower appellate Court further noticed that Rajinder Singh against whom the appellant had levelled allegations ultimately appeared as DW2 and he also accepted that the appellant had executed the agreement to sell.

Consequently, the lower appellate Court held that the agreement to sell was proved and ordered the appellant to refund the earnest money with interest. Hence the present appeal.

Counsel for the appellant has laid great stress on the fact that PW3-Dimple Sharma accepted that the consideration was not passed in his presence. He has taken me through the testimony of Dimple Sharma, respondent No.1-Darshan Singh and DW-Rajinder Singh as well as has shown for my perusal the agreement to sell. Interestingly in the agreement to sell it is mentioned as follows :-

“ Freeq avval ne mublic 100000/- rupee (one lakh rupee)
nakad bator bayana freeq doyam se wasul pa liya hai”

This sentence can be translated like this that the first party has received a sum of ₹ 1 lakh from the second party. There is no necessary implication that the money was received at the same time the agreement to sell was executed. Moreover, the attesting witness has testified to the effect that parties to the document had signed the same in his presence and in the presence of the other witness and he had attested the same along with the other witness in the presence of the parties to the document. The mere fact that the consideration did not pass in his presence would not render the agreement to sell ineffective. The lower appellate Court also rightly believed the testimony of Rajinder Singh DW2 who had accepted that the appellant had signed the agreement to sell. In these circumstances, the onus had shifted on the appellant to prove that he had not signed the document and apart from his own oral testimony, there is no evidence in support thereof. The appellant did not bother to examine even a hand writing expert. There is preponderance of probability that the appellant had

signed the agreement to sell. There is natural presumption that the contents of that document are correct. In my opinion, the lower appellate Court has rightly held that the appellant had executed the agreement to sell and had received the money, and correctly ordered refund of the earnest money. Consequently, finding no merit this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

July 20, 2018
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(AJAY TEWARI)
JUDGE

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