

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

RSA No.6347 of 2017(O&M)

Date of decision: 27.7.2018

Jaswant Kaur

....Appellant

VERSUS

Charanjit Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Gupta, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to mortgage dated 01.03.2011 regarding land measuring 3 marlas, detailed in head-note of the plaint, was dismissed by the trial Court vide judgment and decree dated 11.07.2016 and the appeal preferred by unsuccessful plaintiff/appellant did not find favour with the District Judge, Faridkot.

Counsel for the appellant would contend that application for admission and denial of document i.e. agreement to mortgage dated 01.03.2011, basis of the suit, was filed before the trial Court and in response thereto, the respondent/defendant got recorded her statement dated 05.11.2015 whereby she admitted that the agreement to mortgage Ex.P1 bears her thumb impressions at points 1, 2 and 3, therefore, there was a heavy onus to be discharged by the respondent/defendant to substantiate her plea that her thumb impressions were obtained on blank

papers. Further submitted that the agreement not only bears thumb impressions of respondent/defendant but the same also has photograph of the respondent/defendant.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

The respondent/defendant had raised a categorical plea that she never entered into an agreement with plaintiff, as alleged. She borrowed Rs.25,000/- from the plaintiff about 4 years prior to the present suit. About 2 years back, she visited the Court Complex along with Rs.30,000/- to return the borrowed amount but the plaintiff refused to accept the same in presence of Malkeet Singh son of Mahinder Singh. Plaintiff insisted upon Malkeet Singh that he should compel the defendant to agree to sell her property but she did not agree. Few days thereafter, the plaintiff again approached her that since she is unable to repay the borrowed amount along with interest, she should sign some blank papers as security of loan amount and in the process, the plaintiff got her thumb impressions on some papers. It is further averred that till date, possession of suit land is with the defendant.

The trial Court, in para 11 of the judgment, has noticed that the appellant/plaintiff in her cross examination failed to explain as to how she arranged sum of Rs.1,11,500/-, stated to be paid to the respondent/defendant towards earnest money at the time alleged agreement of mortgage was executed. It has further been noticed that the appellant examined one marginal witness to the agreement but the said witness Gurdev Singh PW-2 did not appear in the witness box for cross examination, meaning thereby that his testimony cannot be taken into consideration. Further held that the respondent/defendant examined

Malkeet Singh, second attesting witness to the agreement and he has substantiated plea of the respondent that no money recorded in the agreement of mortgage was paid by the appellant to the respondent.

As per the settled position in law, civil disputes are to be decided on the basis of preponderance of probabilities. The trial Court has rightly taken into consideration vital facts elicited in cross examination of the appellant/plaintiff coupled with failure of the appellant to examine a marginal witness of the agreement along with the fact that stand taken by the respondent gets corroborated from testimony of Malkeet Singh DW-2, I do not find an error much less perversity in concurrent findings recorded by the Courts negating plea of the plaintiff/appellant claiming possession by way of specific performance of agreement of mortgage dated 01.03.2011. This apart, even an erroneous finding is not amenable to challenge in regular second appeal and challenge can be laid if the judgment suffers from perversity or raises a question of law that needs determination in regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 43 days in re-filing the appeal is of academic relevance only. No order as to costs.

JULY 27, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no