

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

R.S.A.No.802 of 2017 (O&M)

Date of Decision: November 01, 2018

Jeet Singh (since deceased) through L.Rs

...Appellant

Versus

Manjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr. Balbir Singh Sewak, Advocate,
for the appellant.**

**Mr. Avnish Mittal, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

Appellant-defendant has not been successful in defending the suit claiming specific performance of the agreements to sell dated 20.07.2006 and 15.09.2006 when the date was extended to 18.09.2007 in respect of 8 bighas of land against receipt of earnest money of ₹15,00,000/-, agreed to be sold for a total sale consideration of ₹ 20,00,000/-.

Preceding to the filing of the suit, plaintiff is stated to have sent a legal notice dated 22.06.2009 and thereafter filed the suit on 17.07.2009. Jeet Singh vendor of the suit land died and his legal heirs were brought on record. They denied execution of the agreement to sell. Plaintiff examined one of the attesting witnesses Sarabjeet Singh PW-5, Scribe Subhash Chand PW-4 and Stamp Vendor Harvinder Kaur PW-2 to prove the execution, existence and passing of the consideration of amount. The defendant brought on record marked document D1, i.e., agreement to sell dated

27.09.2007 and one of the legal heirs Jaspal Singh appeared as DW-1.

The trial Court, on the basis of the evidence, while discarding the version of the defendant, decreed the suit by accepting the evidence of the plaintiff. Appeal laid before the Lower Appellate Court was also dismissed.

Mr. B.S.Sewak, learned counsel appearing on behalf of the appellant submitted that Sarabjeet Singh was none else but real nephew of vendee Manjit Singh. A specific question was raised whether any agreement was entered into with Jeet Singh, but he feigned ignorance. Mark D1 is the agreement dated 27.09.2007 entered into by Jeet Singh with Sarabjeet Singh where plaintiff Manjit Singh is a witness, which shows that the plaintiff, who was a commission agent, was indulging into using blank thumb marked papers into agreement to sell. There was no intention to part with the property and, therefore, the discretionary relief ought not to have been granted. All these factors have not been taken care, therefore, there is misdirection, much less illegality and perversity.

Mr. Avnish Mittal, learned counsel appearing on behalf of the respondent- plaintiff submitted that appellant-defendant has not been able to controvert the signatures/thumb impressions on the agreement to sell and the circumstances. The alleged agreement dated 27.09.2007 was never pleaded and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant.

Stamp Vendor PW-2, Scribe PW-4 and attesting witness PW-5 have been consistent with regard to the execution and registration of the

agreement to sell. It is immaterial that Sarabjeet Singh PW-5 was nephew of the plaintiff. Any stranger to the agreement to sell expresses his apprehension. Defendant was served with legal notice dated 22.06.2009 but did not choose to file reply nor placed on record any material to establish that he was dealing with selling of agricultural produce to the plaintiff being commission agent, who had an overruling effect on him resulting into misuse of the blank papers. Document mark D-1 has not been proved. No witness of the same has been examined and, therefore, there is no force and merit in the submission of Mr. Sewak and his argument is wholly misplaced. If at all, there was some truth in the stand, nothing prevented the defendant to examine the expert qua his thumb impression/signature.

As an upshot of my aforementioned observations, the findings arrived at by the courts below do not call for any interference or suffer from any illegality or perversity. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

November 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No