

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.873 of 1996(O&M)
Date of Decision:25.01.2019

Harnam Singh

...Appellant(s)

Versus

Mangat Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.S.Jatana, Advocate for the appellant.
Mr.G.S.Sidhu, Advocate for respondent No.1.
Mr.Sandeep K. Sharma, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

CM-2237-C-1996

Dismissed as not pressed.

CM-749-C-2014

Applicant seeks permission to bring on record the legal representatives of respondent No.1-Mangat Singh (since deceased).

Application is allowed for the reasons stated therein, however, subject to all just exceptions and only for the limited purpose of decision of the appeal.

CM stands disposed of.

Main Appeal

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment of the learned trial court, resulting in dismissal of the suit filed for

specific performance of the agreement to sell dated 1.11.1982 as also additional agreement dated 11.01.1984.

The defendant disputed the execution of the agreement to sell and pleaded that he only signs the document, whereas alleged agreements to sell bears his alleged thumb impressions.

The learned trial court decreed the suit, however, the learned first appellate court has reversed the judgment. The judgment passed by the learned first appellate court is in detail and records cogent reasons to disbelieve both the agreements to sell. Some salient features may be noticed as under:-

(i) Agreement to sell dated 01.11.1982 runs into two pages and alleged thumb impression of the defendant is only on the second page. Although first page bears thumb impression and signatures of the marginal witnesses, however, no marginal witness has been examined. There is a difference in spacing in between the lines. The thumb impression on the second page is also on the left hand margin of the page.

(ii) As regards the second agreement dated 11.01.1984 which is actually an extension of the first agreement, the thumb impressions of the defendants are again on the left hand margin. This agreement also runs into two pages but on second page the narration of the agreement to sell comes to an end by just writing 1½ lines on the stamp paper but thumb impression of the defendant is after a gap of approximately 8 inches and that also on the left hand margin. Still further, both the agreements

to sell are alleged to have been scribed by Bhagwan Singh but he did not produce the register in which entries of the agreements to sell have been entered and thumb marked by the defendant on the ground that same has been lost.

(iii) No marginal witness from the first agreement dated 01.11.1982 has been produced.

This Court has heard the learned counsel for the parties at length.

No doubt, initially this Court had allowed the appeal but the judgment was set aside by the Hon'ble Supreme Court vide order dated 03.03.2008.

Learned counsel for the appellant has submitted that during the pendency of the appeal, parties had entered into a settlement in the year 1996. Two compromise deeds have been produced in file. Both compromise-deeds are of the year 1996 correctness whereof is disputed by the defendants. There is no evidence that the aforesaid compromise deeds have ever been acted upon or accepted by the defendant. Still further when the appeal was decided on merits on 16.01.2001, the plaintiff did not get the appeal disposed of, in terms of compromise.

The execution of the deed of compromise is being disputed and there is no material on the file which proves that the compromise deed was voluntarily signed or is thumb marked by the defendant, particularly when 23 years have elapsed, this Court does not find that the appeal can be disposed of, in terms of compromise.

For the reasons recorded above, there is no ground to interfere

with the judgment of the learned first appellate court. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

25.01.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No