

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

106

RSA No.1637 of 2005 (O&M)

Date of decision: 08.02.2019

Ajaib Singh

..... Appellant

Versus

Baj Singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. N.S. Sodhi, Advocate and  
Mr. Manvir Singh, Advocate  
for the appellant.

Mr. M.K. Sajjan, Advocate  
for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Plaintiff-appellant is in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court resulting in dismissal of the suit filed for specific performance of the agreement to sell.

At the outset, it must be noticed that the plaintiff is son who claims the agreement to sell dated 29.06.1991 from his father-defendant No.1. Learned First Appellate Court after appreciation of evidence has recorded the following reasons to disbelieve the correctness of the agreement to sell:-

1. Once except Rs.4,000/-, remaining amount was paid i.e. Rs.1,45,250/- no explanation is forthcoming, as to why the sale deed was not got executed.

2. The plaintiff has failed to prove that he has resources to pay the amount of Rs.1,45,250/-.

3. The agreement to sell is not scribed from a professional scribe rather it has been alleged to have been scribed by an Advocate who does not maintain any register. The agreement to sell is hand written allegedly by an Advocate which is not expected of.

4. A bare look at the agreement to sell, it is apparent that the agreement to sell has been drafted on a stamp paper which already had thumb impression because with each passing line, the space between the lines have decreased. Still further, it is apparent that the receipt of Rs.50,000/- , the revenue stamp has been affixed in the lower part of the receipt where recitals in the receipt are still continuing. The revenue stamp has not been affixed where the thumb impression of the alleged executant are existing. There is no reason forthcoming as to why the non-judicial revenue stamp has been affixed on the recitals of the receipt. Coupled with the aforesaid facts inter se relationship between the parties.

Learned First Appellate Court has elaborately dealt with the aforesaid reasons and found as a matter of fact that the agreement to sell is not a genuine transaction and there was in fact no agreement to sell.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant while referring to the evidence of the attesting witnesses submitted that the conclusion arrived at by the First Appellate Court is erroneous. No doubt, the attesting witnesses have supported the case of the plaintiff, however, that is not the end of the

matter. The plaintiff has to justify and explain the reasons which have been found by the First Appellate Court while reversing the judgment. This Court while exercising the jurisdiction while hearing the second appeal does not get the jurisdiction to reverse the judgment of the First Appellate Court without finding any perversity or misreading of substantive evidence.

Learned counsel for the appellant failed to point out any perversity or misreading or non-reading of substantive evidence in the finding recorded by the First Appellate Court. Learned counsel has further submitted that the stamp vendor who had sold the stamp paper has been examined as DW-4 whereas he has stated that the stamp paper was purchased by the executant. In the considered view of this Court, such argument would not advance the case of the appellant. This Court is not required to re-appreciate the evidence unless some substantive error is pointed out.

Hence, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

**08.02.2019**  
Dinesh Bansal

**( ANIL KSHETARPAL )**  
**JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No