

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

**R.S.A. No 3420 of 2019
Date of decision : 17.07.2019**

Ranbir SinghAppellant

versus

Jatin Dhawan ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Parminder Singh, Advocate
for the appellant.

RITU BAHRI, J.

C.M. No. 9218-CI-2019

For the reasons mentioned in the application, delay of 107 days in filing of the appeal is hereby condoned.

The application stands disposed of.

R.S.A. No. 3420-2019

The present appeal is directed against concurrent find of facts recorded by both the Courts below whereby suit filed by plaintiff/respondents for possession by way of specific performance of agreement to sell dated 11.05.2011, has been decreed

Brief facts of the case are that the defendant/appellant is owner in possession of the suit property and he agreed to sell the same to him at the rate of Rs.15,00,000/- per acre. The defendant received Rs. 8,00,000/- as earnest money. The terms and conditions of the agreement were mutually settled between the parties and agreement was signed by the concerned parties in the presence of the witnesses. As per the agreement the date for execution and registration of sale deed was fixed as 10.04.2012. However, on 06.04.2012, the defendant came to

him and said that due to family dispute he is not in a position to get the sale registered on 10.04.2012 and demanded Rs. 5 lakh as additional earnest money. Thereafter, the date for registration of sale deed was extended to 17.08.2012 and defendant received Rs.5,00,000/- as additional earnest money. In this way defendant has received in total Rs. 13,00,000/- as earnest money. On 17.08.2012, he remained present in the office of Sub Registrar, Madlauda along with the balance sale consideration and other charges from 9 a.m. to 5 p.m. but when the defendant did not turn up he got his presence marked in token of his presence by getting the affidavit attested before Executive Magistrate, Madlauda. Thereafter, on 01.09.2012, he sent a legal notice to the defendant requesting him to come present in the office of Sub Registrar, Madlauda on 14.09.2012. On 14.09.2012 also he remained present in the office of Sub Registrar, Madlauda along with the balance sale consideration and other charges from 9 a.m. to 5 p.m. but defendant did not turn up. Thereafter, he again sent a legal notice to the defendant on 18.10.2012 requesting him to come present and execute the sale deed within 15 days but the defendant kept delaying the execution of sale deed on one pretext or the other and finally refused to execute the sale deed in his favour. He requested the defendant many times to get the sale deed executed in his favour, but in vain.

On notice of the suit, defendant/appellant filed written statement and denied that he ever entered in any agreement to sell dated 11.05.2011 of the suit property for a sale consideration of Rs.15,00,000/- per acre. He averred that he had not received even a single penny from the plaintiff/respondent. He did not put any thumb impressions or signatures on the agreement to sell.

Replication was filed. From the pleading of the parties, the following issues were framed:-

“1. Whether the defendant executed the agreement dated 11.05.2011

to sell the suit property to the plaintiff for a sale consideration of Rs. 15,00,000/- per acre? O.P.P.

2. Whether the plaintiff has always been ready and willing to perform his part of contract? O.P.P.

3. Whether the plaintiff is entitled to possession of the suit property by way of specific performance of agreement dated 11.05.2011? O.P.P.

4. Whether the plaintiff is entitled to permanent injunction restraining the defendant from alienating the suit property, in any manner, whatsoever? O.P.P.

5. Whether the suit filed by the plaintiff is not maintainable in its present form? O.P.D.

6. Whether the plaintiff has no locus standi or cause of action to file the present suit ? O.P.D.

7. Relief.”

Both the Courts below rightly decreed the suit of the plaintiff/respondent by observing that handwriting and finger prints expert Shri Shamsheer Singh has found the disputed signatures on the agreement to sell Ex P2 and standard signatures on the registered mortgage deed no. 199/1 dated 09.05.2008 and conditional mortgage deed No. 223/1 dated 15.05.2003. No dent was made in the cross examination of this witness. Further the register of stamp vendor bears the signatures of the defendant/appellant and the plaintiff/respondent and the attesting witness clearly stated that agreement and Majid agreement was executed between the parties. Rs.13,00,000/- as earnest money was received by the appellant. Reference has further been made to Ex P.W.5/A and P.W.5/5 i.e the mortgage deeds allegedly executed by the appellant in favour of one Babli and the Panipat Central Co-op Bank Ltd.

Learned counsel for the appellant has vehemently argued that the appellant never affixed his signatures on agreement to sell. Further the agreement

to sell is a forged document. Learned counsel submits that the scribe of the witness has also not been examined by the plaintiff/respondent.

The argument is liable to be rejected, as the signatures of the defendant/appellant has been proved by handwriting and finger prints expert Shri Shamsheer Singh . Further merely because the scribe has not been examined is no ground to doubt the authenticity of the version of the plaintiff/respondent. The appellant has failed to prove on record what kind of fraud was played upon him. On the other hand, the plaintiff has proved that the agreement to sell was executed between the parties. The respondent was ready and willing to execute the agreement to sell but it was the appellant who did not come present in the office of Sub Registrar.

Accordingly, the concurrent findings of facts recorded by both the Courts does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

July 17, 2019
G Arora

(RITU BAHRI)
JUDGE