

RSA No.4029 of 2019 (O&M)

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

RSA No.4029 of 2019 (O&M)  
Date of decision: 29.08.2019

Gurnam Singh

.....Appellant

versus

Bhupinder Kaur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Mr. Harkirat Sandhu, Advocate, for the appellant.

**RAMENDRA JAIN, J. (ORAL)**

Defendant has filed instant Regular Second Appeal against judgment and decree of the First Appellate Court dated 29.05.2019, affirming judgment and decree of the trial Court dated 25.04.2017, whereby suit of the respondent-plaintiff for possession by way of specific performance was decreed.

Briefly, respondent filed a suit for possession by way of specific performance of agreement to sell dated 08.07.2011 against the appellant, whereby he had agreed to sell 04 marlas of land along with construction detailed in the judgment of the trial Court, situated at Village Bahalpur, Tehsil Kharar, District SAS Nagar, for a consideration of Rs.5,50,000/-, out of which Rs.4,00,000/- was paid towards earnest money. The date of registration and execution of sale deed was on or before 20.12.2011. Respondent-plaintiff was always ready and willing to perform his part of the contract. However, appellant-defendant failed to perform his part of the contract.

The said suit of the respondent-plaintiff, after contest tooth and

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nail, was decreed by the trial Court vide judgment and decree dated 25.04.2017.

Being aggrieved, appellant approached the First Appellate Court, but remained unsuccessful as his appeal was dismissed vide judgment and decree dated 29.05.2019.

Learned counsel for the appellant *inter alia* contends that documents to be relied upon by the appellant in support of his contention that alleged agreement in between the parties dated 08.07.2011 was the result of fraud and mis-representation, were already on the record, but same could not be proved or exhibited on account of regular mental illness of the appellant. Appellant had moved an application for additional evidence before the appellate Court, but it illegally dismissed his appeal without dealing with the said application. The stamp paper, on which alleged agreement to sell dated 08.07.2011 was prepared, was purchased for the purpose of special power of attorney and was illegally and fraudulently used as agreement to sell. Both the Courts below failed to appreciate above infirmities, while illegally, decreeing suit of the respondent-plaintiff.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Agreement to sell dated 08.07.2011 was duly proved beyond any shadow of doubt by the respondent-plaintiff in her own deposition as PW1, duly corroborated by PW2 Daler Singh attesting witness. PW2 Daler Singh in his cross-examination categorically testified that before signing, aforesaid agreement was read over to the appellant-defendant and thereafter only he put his signature on the same and on receipt as well. Appellant-

defendant did not lead any evidence to rebut the aforesaid evidence led by

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the respondent-plaintiff. Moreso, it is settled proposition of law that allegations of fraud, forgery or mis-representation in a civil case are to be proved like criminal charges. In the instant case, appellant-defendant did not lead any evidence, what to talk of cogent and convincing to nullify agreement in question.

That apart, to prove his readiness and willingness respondent-plaintiff examined Gurmail Singh Nambardar attesting witness of her affidavit Ex.P3, whereby she got marked her presence before the Sub-Registrar. His statement was corroborated by PW5 Shishupal, Clerk of the office of Sub-Registrar, Kharar, who proved Ex.P3.

It is pertinent to mention here that Rattan Singh another attesting witness of the agreement to sell was the real brother of appellant-defendant. Therefore, it was very easy to controvert agreement in question or in other words to prove that same was the result of fraud and mis-representation by examining him. Non-examination of his brother Rattan Singh, second attesting witness of the agreement in question by the appellant requires to draw adverse inference against him that he did not adopt any such exercise deliberately, knowing well that he would not support his false plea. Plea of the appellant-defendant that he had a long drawn litigation with his aforesaid brother Rattan Singh, since last 15 years and they were not on talking terms with each other, in the absence of any proof on record, is apparently false.

As far as alleged mental illness of the appellant-defendant is concerned, during the course of arguments his counsel has admitted that appellant retired from service on attaining the age of superannuation, which fact in itself proves that appellant-defendant was fit to discharge his official

duties throughout his service career, otherwise he would not have been

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permitted to continue his service on account of his alleged mental infirmity.

Statement of DW2 Sarup Singh Nambardar has rightly been discarded by the Courts below in view of the fact that appellant-defendant and DW2 Sarup Singh are residents of different villages situated 3/4 kilometers away from each other. That apart DW2 Sarup Singh Nambardar could not successfully face the test of his cross-examination, when he could not tell as to from what disease the appellant was suffering from or the name of the doctor from whom the appellant was getting regular treatment.

Stamp paper on which agreement to sell dated 08.07.2011 was written and signed by the appellant-defendant was purchased by him. Therefore, any clerical mistake committed by the stamp vendor, while issuance of the same mentioning wrong purpose has no material bearing on the merits, rather relates to insignificant aspect of the case, when genuine execution of agreement to sell is proved by the respondent-plaintiff on the record beyond any shadow of doubt.

No question of law much less substantial has been raised in this appeal. Hence, same is held not maintainable.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

**(Ramendra Jain)**  
**Judge**

**August 29, 2019**  
R.S.

Whether speaking/reasoned      Yes/No

Whether reportable                Yes/No