

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA NO.3267 OF 2011 (O&M)  
DECIDED ON: 02.07.2019

BALBIR SINGH AND ANR.

...APPELLANTS..

VERSUS

RASHPAL SINGH

...RESPONDENT..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. V.K. Bali, Advocate,  
for the appellants.

Mr. Aayush Gupta, Advocate,  
for the respondent.

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RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendant-appellants have preferred this Regular Second Appeal against judgment and decree dated 21.04.2011 of the appellate court, who, while setting aside judgment and decree dated 01.09.2009 of the trial court, dismissing suit of the respondent-plaintiff, accepted his appeal, thereby decreeing his suit for possession and permanent injunction by way of specific performance of agreement to sell.

Briefly, respondent-plaintiff-Rashpal Singh filed a suit for possession and permanent injunction by way of specific performance of agreement to sell dated 12.04.2003 qua land measuring 3 kanals 8 marlas situated at village Bir Kalwa, Tehsil Thanesar, Sub-Tehsil

Babain, District Kurukshetra, fully detailed in para No.1 of the impugned judgment, against the appellants-defendants. The trial court, after holding full fledged trial, dismissed the suit vide judgment and decree dated 01.09.2009.

Being aggrieved, respondent-plaintiff approached the first appellate court, who, while accepting his appeal, decreed his suit vide judgment and decree dated 21.04.2011.

Appellants have laid challenge to the impugned judgment of the appellate court on the following grounds:-

(i). Stamp paper was purchased two years prior to the date of execution of agreement to sell.

(ii). The agreement to sell (Ex.P-5), was undated, which creates suspicion that the respondent-plaintiff had a pre-plan to commit some cheating with the appellants.

(iii). Wrong date was mentioned by the respondent-plaintiff in his affidavit furnished before Sub-Registrar, Thanesar to mark his presence for execution and registration of sale deed and in legal notice.

On the other hand, learned counsel for the respondent-plaintiff opposing the above submissions contends that all these infirmities have been discussed by first appellate court in detail, while accepting the appeal.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal completely devoid of

any merit for the reasons to follow:-

1. No question of law much less substantial has been raised in this appeal, which is a condition precedent to file and entertain a regular second appeal.

2. The finding of the trial court that stamp paper was purchased two years prior to the date of execution of agreement to sell, is patently illegal and wrong, inasmuch as, to prove this fact, the best witness, so to be examined by the appellant-defendants was the stamp vendor, who was not examined for the reasons best known to them. Non-examination of such a material witness by the appellants requires to draw an adverse inference against them that they did not adopt any such exercise, knowing well that their above plea was completely false and the stamp vendor would not support their false plea.

During the course of arguments a photocopy of the alleged agreement to sell (Ex.P-5) was produced to persuade this Court that stamp paper was purchased two years prior to the date of execution of agreement to sell, which, on perusal, this Court finds that the same was not purchased in the year 2001, rather, must have been purchased in the year 2003, in which the agreement to sell was executed.

It is apparent on the record that appellants-defendant fictitiously and falsely want to take undue advantage of illegible writing of the stamp vendor on the stamp paper. The mentioning of wrong date in the affidavit of respondent-plaintiff, which he produced before the Sub-Registrar, Thanesar and legal notice have not much

relevance, after allowing of amendment in the plaint qua correct date of agreement to sell, by the trial court. Readiness and willingness of the appellants-defendants is well proved on the record.

I have gone through the judgment of first appellate court and find no illegality or perversity in the same.

In view of the discussion above, this Court is not inclined to differ with the findings recorded by the first appellate court. The instant appeal is dismissed.

Decree sheet be prepared accordingly.

**02.07.2019**

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**(RAMENDRA JAIN)**

**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether reportable**

**Yes/No**