

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

**C.M.No.3542-C-2019 in/and
RSA No.4982 of 2012 (O&M)
Date of Order: 12.03.2019**

Gurpal Singh

..Appellant

Versus

Jagseer Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raj Kumar Kakkar, Advocate,
for the applicant-appellant.

Mr. Sandeep Khunger, Advocate and
Ms. Nitika Jawa, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the findings of fact arrived at by the courts below while dismissing the suit for possession by way of specific performance of the agreement to sell.

No doubt, learned first appellate court has modified the decree as the learned trial court ordered refund which has been reversed by the first appellate court.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellant submitted that once the execution of the agreement to sell has been proved as found by the courts below, the court ought to have decreed the suit for specific performance of the agreement to sell. He further submitted that the courts

below have erred while returning a finding that the thumb impression of the predecessor-in-interest of the defendants-respondents on the left hand margin of the paper on which agreement to sell is scribed, is suspicious.

This court has considered the submissions, however find no substance in it for the following reasons:-

- (1) It is admitted that the plaintiff is nephew of a commission agent where Chand Singh predecessor-in-interest of the defendants used to sell his crop and had long standing dealing of borrowing the money on interest. It has also come in evidence that Chand Singh was liable to pay approximately Rs.9000/- to the uncle of the plaintiff.
- (2) Plaintiff when appeared in evidence has admitted that he has never seen the land in dispute. Normally, if one is to purchase an immovable property, minimum he would do is to see the location of the property, quality of soil and irrigation facility. Once the plaintiff had not even seen the land, chances of contract for sale, are very remote.
- (3) In the agreement to sell, it is recorded that late Sh. Chand Singh is selling the property to purchase tractor and dig bore for establishing a tubewell. However, it has come in evidence that Chand Singh was already owner of the tractor having purchased the same after obtaining loan from a State agency.

Cumulatively, after taking into consideration these facts the courts have found that the agreement to sell is not proved to be genuine.

As regards arguments of learned counsel for the appellant that

thumb impressions of Chand Singh on the left hand margin of paper on which agreement to sell is scribed itself cannot be treated as suspicious, it may be noticed that it would always depend upon facts and circumstances of the each case. The alleged agreement to sell is Ex.P1. No doubt, it has been executed on twenty rupees non judicial stamp paper, however, there is sufficient space available on the foot of the page after the recitals in the alleged agreement to sell comes to an end. There is no reason as to why the thumb impression of late Sh. Chand Singh was called upon to put at the space on the left hand margin.

The civil court is to decide the suit on preponderance of evidence. Learned first appellate court on appreciation of evidence have recorded a finding. While deciding regular second appeal, the court can re-appreciate the evidence only if the findings are result of substantive misreading or non reading of evidence. In the present case, although learned counsel appearing for the appellate made sincere attempt, however could not persuade this court to arrive at different finding than the findings of the first appellate court. He failed to establish that the findings of the first appellate court are result of substantive misreading or non reading of evidence. Hence, there is no ground to interfere.

The regular second appeal is dismissed.

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In view of the judgment passed on merits, the application does not survive.

March 12, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No