

RSA-1244-2016 (O&M)

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

RSA-1244-2016 (O&M)

Date of decision : 22.02.2019

Naveen Kumar

... Appellant

Versus

Karan Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-defendant has not been able to defend the suit for specific performance of agreement to sell dated 26.04.2005, in respect of land measuring 3 marlas, agreed to be sold for a total consideration of ₹95,000/- per marla, against the payment of ₹80,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 15.10.2005. The plaintiff appeared before the sub-Registrar on 13.10.2005 as 14.10.2005 and 15.10.2005 were Saturday and Sunday. On 14.10.2005, a legal notice was sent, calling upon the defendant to appear before the Sub-Registrar on 24.10.2005, the plaintiff remained present, but the defendant did not turn up.

The defendant admitted the signatures and writing. It was stated that it was a loan transaction and the amount of ₹80,000/- was not towards the earnest money, but as a loan. The writing was executed as

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security of financial liabilities.

The plaintiff, in support of the pleadings, examined four witnesses and brought on record Ex.P1 to Ex.P9, whereas the defendant examined three witnesses and brought on record Ex.D1.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant-defendant submitted that the alleged agreement to sell is not on a regular stamp paper nor has a revenue stamp of receipt of ₹80,000/- as earnest money. There had been an adjustment in the agreement as few opening lines were having a gap different from the other lines. A person, who had take the money, has also been examined. The aforementioned factors, if looked into in entirety, cumulative effect would have been dismissal of the suit by denying the discretionary relief. The document being un-stamped, in view of the provisions of Section 35 of the Indian Stamp Act, could not have been looked into for the legal purposes. In support of his contentions, reliance has been laid down to the ratio decidendi culled out by Andhra Pradesh High Court rendered in **"Tadi Jaganmohana Reddy V/s Karri Satyanarayana Reddy: 2010 (41) RCR (Civil) 310.**

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goel. It is a matter of record that stamp paper bears the stamp of ₹5/-. It is possible that sometimes the stamp papers are not available and then, stamp is affixed and sold by the stamp vendor. The defendant had purchased the stamp paper. The attesting witnesses have not only proved the intention of the parties to sell and purchase, but the payment of earnest money was also in respect of that and not as a loan. The

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defendant in the written statement admitted that he signed the paper with some writing, therefore, plea of adjustment of the signatures on the blank paper, would pale into insignificance.

There is no dispute to the *ratio decidendi* in the judgment cited supra, but the facts and circumstances of each case, are different, therefore, the judgment would not be applicable in the instant case.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

22.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**