

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

**RSA No.1818 of 2016 (O&M)
Date of Decision.05.03.2019**

Krishna Devi (deceased) through LRs ...Appellant

Vs

Jiwan Kumar .Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Divya Suri, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.4885-C of 2016

For the reasons stated in the application, delay of 6 days in
filing of the appeal is condoned.

Application is allowed.

RSA No.1818 of 2016

The appellant-plaintiff has not been successful in claiming
specific performance of agreement to sell dated 27.01.2010 wherein the
defendant alleged to have agreed to sell the suit land after having
received a sum of ₹3 lakhs.

It was alleged that the entire sale consideration was ₹3
lakhs and the plaintiff was put in possession with liberty to raise
construction. The suit was filed in May, 2010.

Defendant opposed the suit and raised the plea that in fact
he had entered into agreement to sell dated 28.01.2010 and received ₹9
lakhs from one Kamaljeet and Pardeep Kumar. With regard to plea of
possession, it was settled that balance sale consideration of ₹4 lakhs
would be paid by them to the plaintiff at the time of completion of sale

and thereafter sale deed would be executed within 15 days from the date of lifting ban by the State Government. Kamaljeet and Pardeep Kumar turned dishonest and to avoid the liability, may have executed the alleged agreement in favour of the plaintiff by misusing the thumb impressions on blank papers, which were in their custody.

Plaintiff examined herself as PW3 whereas examined Vikash Kumar as PW1, Pawan Kumar as PW2 and Satpal as PW4 and brought on record legal notice Ex.P1, postal receipt, acknowledgment, original agreement and copy of receipt as Ex.P2 to P5. On the other hand, defendant examined himself as DW1 and brought on record Ex.D-A to D-D.

Learned counsel appearing on behalf of the appellants submitted that it is not necessary for the plaintiff to know the vendor being a lady as all acts are done by male member. In such circumstances, PW2 and PW4 i.e. her grandson and son were brought as witnesses. The finding with regard to line spacing of the agreement is neither here nor there. Plaintiff failed to examine another witness with regard to agreement dated 28.01.2010. In the absence of liquid cash, discretionary relief cannot be declined, for, there was categorical pleading of having sold the house 9 years back and therefore, had capacity to purchase the property. Mere signing of the agreement unless fraud and misrepresentation is not pleaded and proved, a person cannot deny his stand as it would have strong presumption of having signed or appending thumb impressions on documents in full senses. In support of aforementioned, relied upon ratio decidendi culled out by Hon'ble Supreme Court in **Grasim Industries Limited and another Vs. Agarwal**

Steel (2010) 1 SCC 83.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, as plaintiff in the cross-examination feigned ignorance whether defendant was seen by her at the time of agreement or before that, nor disclosed her relationship with PW2 and PW4. PW4 was her son and PW2 was son of PW4, Satpal. Both are interested witnesses. Stamp papers were purchased by Pawan Kumar, PW2 from Vipin Taneja. If it was so, they could have easily summoned the stamp vendor. Perhaps they were afraid of surfacing the truth. No proof with regard to possession or alleged construction raised thereon as per the permission in the agreement to sell is brought on record. Photocopy of the agreement to sell along with receipt has been placed on record. Having a glance of the vernacular, it appears to be typed only in few lines apparently on some blank paper bearing thumb impression of the plaintiff. In such circumstances the ratio decidendi culled out in para 6 of the judgment in **Grasim Industries Limited's case** (supra) would be of no significance.

In view of the aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact and law arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 05, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No