

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

**RSA No.1911 of 2016 (O&M)
Date of Decision.06.03.2019**

Jeni

...Appellant

Vs

Lakhan

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Y.P. Khullar, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff for declaration of setting aside the agreement dated 25.7.2007 and sale deed dated 8.1.2008 with consequential relief of injunction has been dismissed and affirmed by the lower Appellate Court.

The plaintiff alleged that defendant Lakhan Singh was known to him and gave assurance for obtaining loan and took him to the Bank for execution of mortgage but managed to get aforementioned two impugned documents. It was further alleged that as per aforementioned documents plaintiff agreed to sell the suit property for total sale consideration of ₹26,30,000/- against payment of earnest money of ₹6,50,000/- whereas the sale deed is of ₹24,00,000/-, though there is reflection of the agreement to sell and earnest money remains same. There was mandatory requirement to get the sale deed attested through

Numberdar of the village but it was otherwise, thus, there was defiance of the notification issued by the Haryana Government.

Defendant opposed the suit and raised numerous preliminary objections. On merits, it was stated that sale deed was on account of his own volition without any undue influence or fraud as it bore photographs. The complaint submitted by the plaintiff was investigated by the police and found to be false. Plaintiff in order to prove the case examined himself as PW1, Rattan as PW2, Rajinder Singh as PW3, Ahmed Jain, registry clerk as PW4, Munna Lal Clerk, Co-operate Bank as PW5 and brought on record numerous documents spanning from Ex.P1 to P19 and Mark A to Mark Q. On the other hand, defendant examined eight witnesses and brought on record documents Ex.DW1/A, DW2/A, DW4/A, Ex.D1 to D8, Ex.DW5/A to DW5/C and Mark D1.

Mr. Y.P. Khullar, learned counsel appearing on behalf of the appellant submitted that no doubt police filed cancellation report in the FIR registered against the defendant but the fact of the matter is that subject matter of the total sale consideration referred to in the agreement to sell is not the same sale deed. There is difference of ₹2,30,000/-. Even the Numberdar was not of the same village. Even if the plaintiff had been able to obtain the loan subsequent to the sale deed, that would not be a ground to discard the fraud and misrepresentation

as plaintiff had no intention to sell the land at throw away price. The agreement to sell though bore thumb impression but it was appended under the impression of obtaining loan. All these factors have not been looked into in correct perspective by the Courts below as there was an attempt of forgery at the instance of the defendant.

I am afraid aforementioned arguments are not sustainable, as the sale deed being the registered document carried presumption of truth. It bore photographs and endorsement of the Registrar regarding the appearance of the vendor and the vendee. There can be negotiation between the parties to reduce the price as the sale deed dated 8.1.2008 reflects execution of the agreement to sell and payment of earnest money of ₹6,50,000/-. Non-attestation by Numberdar of same village, though can be made technical ground but cannot be taken one of the strong reasons to set aside the sale deed, as ingredients of sale as well as payment of earnest money had been proved to the hilt. A person is not only required to plead fraud and misrepresentation but to prove the same, which remained unproved. All these factors weighed in the mind of the Courts below while dismissing the suit.

In view of such circumstances, arguments of Mr. Khullar have not been able to cut ice to bring the case within the realm of illegality and perversity, 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 06, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No