

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

**RSA No.2039 of 2015 (O&M)
Date of decision:30.01.2019**

Chandan Ram @ Chandan Singh

... Appellant(s)

Vs.

Krishan alias Krishan Kumar alias Krishan Lal ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the specific performance of the agreement to sell dated 18.03.2010 before the trial Court and as well as in appeal.

In a suit filed on 20.12.2010, specific performance of the agreement to sell, ibid was sought on the premise that defendant had agreed to sell the suit property for a consideration of Rs.2,10,000/- against the receipt of earnest money of Rs.1,72,500/-. The stipulated date for execution and registration of the sale deed was 16.10.2010. Since it was Saturday, it was mutually agreed between the parties that the sale deed would be executed on 18.10.2010 but the defendant did not reach the office of Sub Registrar despite the plaintiff remained present till 5.00 p.m.

The defendant denied the agreement to sell, rather came out with a story that plaintiff met the defendant and told him that he would get

sanctioned a loan for him from some bank and in view of such assurance, fell into trap, signed some blank papers which have been misused.

The plaintiff in support of the aforementioned pleading examined himself as PW1, PW2-Balvinder Singh, Advocate, one of the attesting witness, PW3-Surender Bhardwaj, Advocate, PW4-Ram Mehar Bhardwaj, who typed the agreement, PW5-Naresh Kumar, Stamp Vendor and PW6-Sunil Sharma, deed writer. On the other hand, defendant examined himself as DW1 and Kamlesh as DW2.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that reasoning assigned by the Court that five thumb impressions on the back side of the agreement is un-warranted as it is not a common practice amongst the buyers and sellers. The aforementioned fact has been explained by the lawyer as it is a common practice amongst the vendors to wriggle out from the admission. DW1-Krishan Lal/vendor admitted the signatures but denied thumb impressions. This was enough for the Court below to grant the discretionary relief as the testimony of the attesting witness, Balvinder Singh has gone un-scathed. At the best, the Court below could have confined the decree for alternative relief.

I am afraid the aforementioned arguments are not sustainable, for, on going through cross-examination of the stamp vendor, it is revealed that he admitted that serial no.10592 including the disputed one i.e. 1061, there was no date mentioned. Photocopy of the agreement was shown to this Court during the course of hearing, on first and second page of the agreement, there were five thumb impressions of Krishan Kumar. It is not a

common practice amongst the buyers and sellers. Even marking of presence, Ex.P2, has not been proved on record through the office of Sub-Registrar except it was attested. If at all, the plaintiff was so sure that defendant had intended to sell the land and enter into agreement to sell, assistance of the handwriting expert could have been taken. All these factors weighed in the mind of the Courts below to decline the discretionary relief.

The arguments of Mr. Gupta, are not able to bring the case with the realm of illegality and perversity to form the different opinion than the one arrived at by the Courts below.

Resultantly, the regular second appeal is dismissed. The application bearing No.2177-C of 2016 for additional evidence has become infructuous in view of the dismissal of the appeal.

(AMIT RAWAL)
JUDGE

January 30, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No