

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

**RSA No.3779 of 2016 (O&M)
Date of decision:21.02.2019**

Raj Kumar Sharma ... Appellant
Vs.

Raksha Devi (since deceased) through LRs ... Respondent

RSA No.473 of 2017 (O&M)

Raksha Devi (since deceased) through LRs ... Appellant
Vs.

Raj Kumar Sharma ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the appellant in RSA No.3779 of 2016.

Mr. Keshav Pratap Singh, Advocate
for the appellant in RSA No.473 of 2017.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. Keshav Pratap Singh, Advocate accepts notice on behalf of
the respondent in RSA No.3779 of 2016, whereas, Mr. Nitish Garg,
Advocate accepts notice on behalf of the respondent in RSA No.473 of
2017.

Both regular second appeals have arisen out of the common
judgment rendered by both the Courts below, whereby, in a suit filed by Raj

Kumar Sharma seeking specific performance of the agreement to sell dated 5.12.1989 in respect of 1/4th share in house no.286 Sector 32-A, Chandigarh including three other properties, has been partly decreed.

Mr. Vikas Bahl, learned senior counsel assisted by Mr. Nitish Garg, Advocate appearing on behalf of the appellant in RSA No.3779 of 2016 and for the respondent in RSA No.473 of 2017 submitted that the possession of all the properties was handed over to the plaintiff as entire sale consideration was also paid. All the properties were in joint ownership of the appellant-Raj Kumar Sharma and Ishwar Dass. On demise of Ishwar Dass, his half share devolved upon Rakhsa Devi and Shashi Bala. Raksha Devi died during the pendency of the suit and Ramesh Kumar Sharma and Shashi Bala are as legal heirs. Since the time was not essence of the agreement to sell, suit was preceded by a legal notice dated 15.03.2002 and filed on 13.06.2002. The defendants did not deny thumb-impression on the agreement to sell.

The plaintiff in support of the evidence examined Hari Ram Thakur as PW1 and Rajinder Kumar as PW9. The trial Court did not grant the discretionary relief and confined it to the alternative relief. The Lower Appellate Court being the last Court of fact and law has gone into arena of surmises and conjectures by putting the blame on the plaintiff of having not taken the assistance of the expert particularly when the thumb impressions were not denied. The other reason assigned was that agreement to sell required registration as vendee was put into possession and also it was not scribed by the regular deed writer or on the stamp paper, much less any

separate receipt. The reasons assigned by the Lower Appellate Court are not sustainable, as simple receipt can be treated as an agreement to sell. The defendants have not led any evidence to belie the thumb impressions of Raksha Devi. In such circumstances, examination of the handwriting expert was immaterial. Both the witnesses, aforementioned have been coherent and consistent as nothing contrary surfaced. The appeal filed by the vendor was also assigned to the same Court, though decision is same but there was no reference of other appeal, thus, there is gross illegality and perversity.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the vendor/appellant in RSA No.473 of 2017 and for the respondent in RSA No.3779 of 2016 do not deny the factum of decision of other appeal, since the judgment is common. However, it was stated that separate receipt is always issued particularly when possession is handed over. The agreement to sell was denied but not thumb-impressions, thus, it was incumbent and obligatory upon the vendee to prove whether there was an intention of the party to enter into agreement to sell and different shares in the properties mentioned in the plaint, particularly when Raksha Devi passed away died before filing of written statement. Even notice was sent at the address i.e. house no.205 Darshani Bath, Manimajra being resident of house No.204. There was an attempt to get the ex parte judgment. There is time gap of almost 13 years itself is ground for declining the discretionary relief, thus, there is illegality and perversity qua relief of refunding of the earnest money.

I have heard the learned counsel for the parties, appraised the judgments and decrees of both the Courts below and of the view that it is a fit case where matter at the level of the Lower Appellate Court requires to be re-visited, for, it is settled law that even if the vendee had put into possession, the agreement to sell do not require registration.

Both the attesting witnesses PW1 and PW9 have been coherent and consistent with regard to thumb-impressions of the vendor and also with regard to the intention and passing of entire sale consideration qua shares in all the aforementioned suit properties.

It is not necessary for the party to enter into agreement to sell on the regular stamp paper or scribed through deed writer. The written statement do not specifically decipher any denial of the execution of the agreement to sell except it was stated that thumb-impressions of Raksha Devi were not identified by independent witness. Though the Court below had not agreed with the contention of the vendor by noticing the judgment as it is not mandatory for the purchaser to sign or thumb-mark the agreement to sell. Even the cross-examination of attesting witnesses, who stood its wrath, has not been referred to. The First Appellate Court is enjoined upon an obligation to refer each and every document including the evidence much less cross-examination by forming the point of determination as per the provisions of Order 41 Rule 31 CPC which is conspicuously lacking and wanting. All these factors have not been looked into.

As an upshot of my aforementioned observations, judgment and

decree of the Lower Appellate Court, in both the appeals, is hereby set aside. The matter is remitted to the Lower Appellate Court to decide the appeals afresh vide common judgment, in essence, both appeals filed by vendee and vendor are restored to its original numbers.

The parties through their counsel are directed to appear before the Lower Appellate Court on 18.03.2019.

Resultantly, regular second appeals stand disposed of.

(AMIT RAWAL)
JUDGE

February 21, 2019
savita

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