

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

**RSA No.4085 of 2016 (O&M)
Date of Decision.21.01.2019**

Rajiv Kumar

...Appellant

Vs

Ashok Kumar and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.10529-C of 2016

For the reasons stated in the application, delay of 8 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.10530-C of 2016

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

Application is allowed.

Main case

The present regular second appeal is directed at the
instance of the appellant-defendant No.2, subsequent purchaser,
against the concurrent finding of fact whereby the suit of the
respondent-plaintiff claiming specific performance of agreement to
sell dated 31.10.2002 has been decreed.

The respondent-plaintiff claimed aforementioned relief
on the premise that defendant No.1 had entered into the

aforementioned agreement to sell for sale of the land for total sale consideration of ₹2,05,000/- against the receipt of ₹1,80,000/- as earnest money. The stipulated date for registration of the sale deed was fixed as 31.10.2003. Before the period could expire, defendant No.1 sold the land to appellant-defendant No.2 vide sale deed dated 09.05.2003 and therefore, the suit was filed on 05.08.2003 as he had always been ready and willing to perform his part of the agreement.

Defendant No.1, the vendor was proceeded ex parte.

Defendant No.2 contested the suit and raised the plea of bona fide purchaser and propounded the prior agreement to sell dated 20.04.2002 Ex.D3.

Both the parties examined respective witnesses to prove their documents and as well as the handwriting expert.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of the appellant submitted that there is no reference and whisper of the handwriting expert on behalf of the defendant whose report unclinchingly established that thumb impressions were of Siyan Ram, the vendor and were tallied with the agreement to sell and the sale deed. The testimony of Surinder Kumar, attesting witness of the agreement to sell has been belied as he only said with regard to the sale deed but Bajrang Lal Gupta was the witness of agreement to sell. Despite his extensive cross-examination, no dent could be caused. Both the Courts below erroneously arrived at finding that the agreement to sell did not establish reflection of ₹65,000/- as earnest money against the sale price of ₹1 lakh, which is totally contrary to the records, thus, entitled to protection under Section 41 of the

Transfer of Property Act.

I have heard learned counsel for the appellant-defendant No.2, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submission, for, the sale deed dated 09.05.2003 do not reflect the adjustment of ₹65,000/-. Its tenor and mode reflects that entire sale consideration was paid at the time of execution of the sale deed, though the money was not exchanged before the Registrar. Be that as it may. Except Bajrang Lal Gupta, no other witness was examined with regard to sale deed but his testimony would not help the appellant, for, the stamp vendor exclaimed that he lost the register. On naked eye, the thumb impression on the agreement to sell dated 20.04.2002 propounded by the appellant-defendant No.2 are not tallying with the sale deed dated 09.05.2003 and as well as agreement to sell in question i.e. 31.10.2002. All these factors weighed in the mind of the Courts below in decreeing the suit.

The arguments of Mr. Jasuja have not been able 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

January 21, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No