

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.788 of 2015 (O&M)
Date of Order: 07.02.2019

Charan Singh

..Appellant

Versus

Bant Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Mittal, Advocate,
for the appellant.

Ms. Pooja Chopra, Advocate, for
Mr. Navdeep Sharma, Advocate,
for the respondent.

ANIL KSHETARPAL, J

The judgment passed by the learned first appellate court is erroneous to say the least. First appellate court is required to re-appreciate the evidence and arrive at a conclusion after dealing with the arguments/contentions of both the parties. In the present case, first appellate court has clearly erred in failing to do so. Operative part of the judgment of the first appellate court is extracted as under:-

“As discussed above firstly, in one way or the other defendants admitted the agreement to sell when they pleaded that defendant used to take liquor with the plaintiff and when defendant was not in senses, plaintiff got thumb impression of the defendant on some blank papers and later on used that paper for making agreement Ex.P1, meaning thereby they admitted the thumb impression of defendant but as per defendant the same were obtained when the defendant was not in his senses and further defendant also argued that plaintiff was not ready and willing to execute the sale deed but to my mind once the defendant has denied the agreement then there would be hardly any justification for the

defendant to argue that plaintiff was not ready to perform his part of agreement because when a party disputes the execution of agreement then it does not lie in his mouth to say that the other party was not ready and willing to execute his part of agreement because on the very outset he denied the agreement. To my mind such an approach would create imbalance of equities and would hardly be justified and further for the argument sake if the thumb impression obtained by fraud then what was the need for plaintiff to extend the date from 15.6.2002 to 15.6.2003 on 13.6.2002 when for his purpose he again required to forge the thumb impression. In these circumstances the arguments of the defendant that there are contradictions in the statement of witnesses, there was no need for the appellant to sell his land have not break much ice for the defendant.”

First appellate court was under impression that once execution of the agreement to sell has been denied, therefore, the plaintiff is not required to prove his readiness and willingness. Such conclusion is against Section 16(c) of the Specific Relief Act, 1963. Still further from the reading of the judgment, it is apparent that the first appellate Court failed to fulfill the responsibilities cast upon the first appellate court being last court of appreciation of facts.

Accordingly the judgment passed by the learned first appellate court is set aside. Case is remitted back to the learned first appellate court to re-decide the first appeal afresh without being influenced by the judgment passed by its predecessor or observations made by this court.

Parties are directed to appear before the first appellate court on 05.03.2019.

February 07, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No