

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

RSA No.5805 of 2015 (O&M)

Date of decision : 01.02.2019

Gurnam Singh

...Appellant

Versus

Balkar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Dassaur, Advocate for the appellant.

Mr. G.S. Bal, Sr. Advocate with
Mr. A.D.S. Bal, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell dated 22.12.2000.

On 17.01.2019, learned counsel appearing for the appellant had contended as under:-

“Learned counsel for the defendant-appellant while referring to the statement of stamp vendor Nirmaljit who has appeared as PW-6, has stated that purchase of stamp paper on the date of agreement to sell is not proved. The stamp vendor in the cross-examination has spilled beans by admitting overwritings, interpolations in serial numbers as also the fact that the register maintained by him is not proper. He has admitted that there is overwriting on the middle digit of entry No.533 and after three pages of entry No.533, entry number starts from serial No.520. He further

went on to admit that entry after entry No.560, starts with serial No.501. Similar are admissions with regard to other entries.

Learned counsel for the respondent prays for and is granted time to examine this issue in depth and assist this Court.

List in urgent on 28.01.2019.”

Today, counsels have been heard once again on length.

Learned counsel for the appellant further added that witness of the agreement to sell in cross-examination, has stated that he had not signed any agreement for the plaintiff. Thus, he submitted that the judgments passed by both the Courts below are erroneous.

On the other hand, learned counsel for the respondent has drawn attention of the Court to register of the Stamp Vendor Ex.PW6/A which proves that it was the defendant who had purchased the stamp paper. He has further drawn attention of the Court to the register of the Stamp Vendor Ex.PW7/A for purchase of the stamp paper for extension of the agreement to sell which is again signed by the defendant. Hence, he submitted that once both the stamp papers were purchased by the defendant, plaintiff cannot be called upon to explain the errors/overwriting/interpolation in the serial numbers of the register maintained by the Stamp Vendor. He further submitted that defendant in the present case has although taken a plea of fraud, however, he has not chosen to appear in evidence as only attorney on behalf of plaintiff, who was not present at time of execution of the agreement to sell, had appeared.

This Court has considered the submissions.

Once there is no evidence to the effect which may prove that as to how defendant signed the register of the Stamp Vendor, both on the date of execution of the agreement to sell as well as on the date the endorsement (by separate agreement) for extension was scribed. The defendant was the best witness who could prove and clarify his case. Onus to prove fraud was on the defendant. Once, the defendant has not appeared in evidence, contention with respect to fraud cannot be accepted.

As regards next contention of learned counsel, it may be noted that the aforesaid witness i.e. PW4 in examination-in-chief has stated that he has signed the agreement to sell as a marginal witness. No doubt in cross-examination, he has fumbled, however, one line in the cross-examination cannot be read in isolation of the entire statement. Still further, the marginal witness is not required for proving validity of the agreement to sell. Agreement to sell is not required to be attested by marginal witnesses. The signatures of the marginal witness-PW4 are there and the defendant has failed to prove that the signatures of marginal witness are not genuine.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No