

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

**RSA No.269 of 2018 (O&M)
Date of Decision:07.03.2019**

Surender Singh

...Appellant(s)

Versus

Jangir Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rakesh Gupta, Advocate for the appellant.

ANIL KSHETARPAL, J.

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for possession by way of specific performance of the agreement to sell dated 16.12.2011 registered on 19.12.2011 through which land measuring 30 kanals and 12 marlas out of total land measuring 114 kanals and 7 marlas was agreed to be sold.

The agreement to sell, as noticed above, is a registered document, wherein payment of earnest money is acknowledged. The agreement to sell also has computerised printed photograph of defendant-appellant along with the plaintiff.

The defendant did not dispute execution of this agreement but pleaded that this document was executed as a security as another deal which the defendant was doing on behalf of the plaintiff had landed in some problem.

Both the courts below on appreciation of evidence have found that the defence of the defendant is not trustworthy.

Learned counsel for the appellant has submitted that proper

opportunity was not granted to the defendant to lead evidence. He pointed out that only four opportunities were granted to the defendant to lead evidence, i.e. on 14.03.2014, 03.04.2014, 08.05.2014 and 09.07.2014. He further submitted that payment of earnest money is not proved as the plaintiff in his bank account was not having sufficient balance. He has also submitted that the defendant-appellant had filed an application for additional evidence, which was dismissed by the learned first appellate court.

This Court has considered the submissions of learned counsel for the appellant and with his able assistance gone through the judgments passed by the courts below.

As regards first argument, the appellant was granted four opportunities to lead evidence. These four opportunities were spread over a period of four months. In the considered view of this Court, the defendant had been granted sufficient opportunities. Still further, when the evidence of the defendant was closed, he could have prayed to the same court for grant of another opportunity or challenged the order by filing a revision petition, seeking further opportunity. Now at the stage of second appeal, the defendant cannot be heard in saying that he has not been granted proper opportunity.

As regards second argument, it may be noticed that the plaintiff nowhere pleads that he had paid the amount after withdrawal of the same from the bank account. In the agreement to sell, the receipt of payment of earnest money has been acknowledged. The defendant does not dispute his signatures on the registered agreement to sell or correctness of his photograph printed thereon. The agreement to sell is in Hindi language and the

defendant has also signed the same in Hindi. Therefore, the defendant now cannot turn around and allege that payment of earnest money is not proved. Still further, once it is not the case of the plaintiff that he paid the amount after withdrawing the same from the Bank, therefore, statement of account from a bank would not advance the case of the defendant. Further, the application for additional evidence filed by the defendant was dismissed by the learned first appellate court by a speaking order.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

07.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No