

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

**RSA No.561 of 2017 (O&M)
Date of Decision.14.05.2019**

Raj Kumar (deceased) through LRs

...Appellants

Vs

Asha Devi and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Dr. Praveen Hans, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellant-defendant is in regular second appeal against the concurrent finding of fact whereby the suit of the respondent-plaintiff has been decreed by the trial Court and affirmed in appeal.

The respondent-plaintiff sought specific performance of agreement to sell dated 8.6.2007 on the premise that appellant-defendant No.1 Raj Kumar along with brother Suresh Kumar sons of Dalip Singh were joint owners in possession of the land measuring 16 kanals 10 marlas being 2/5th share of total land measuring 41 kanals 4 marlas and besides them, Pisto Devi was also share holder. The agreement to sell was in respect of land measuring 25 kanals 9 marlas @₹13,75,000/- per acre along with trees planted therein, tubewell electricity connection and the construction raised and a sum of ₹20 lakhs as earnest money was paid. It was also stated that earlier agreement to sell dated 23.11.2006 was executed. The target date in

2007 agreement was 25.11.2007. The other brother Suresh Kumar had executed sale deed of his share of land measuring 8 kanals 5 marlas on 27.08.2007 for a sale consideration of ₹8,25,000/-. It is an attempt to save the cost of stamp papers. On 23.11.2007, plaintiff had requested defendant No.1 to get the sale deed registered as 24th and 25th November of 2007 were Saturday and Sunday.

The appellant-defendant No.1 in the written statement explained the shareholding of himself and his brother and sister. He admitted the agreement of 2006 but the same was cancelled and under the garb of cancellation, plaintiff obtained signatures. The amount of ₹20 lakhs was returned to Ram Gopal and Babu Ram. The long and short of the stand was that appellant-defendant denied the execution of the agreement to sell.

The plaintiff in support of the aforementioned pleadings brought on record Ex.P1 to Ex.P20 and examined K.K. Khurana, Advocate as PW1, Satender Patwari as PW2, Narender Kumar Grover, deed writer PW3 and herself as PW4, Satbir Singh as PW5, Som Nath, stamp vendor as PW6, Barjrang Lal, stamp vendor as PW7 whereas defendants examined Raj Kumar himself as DW1, Karambir as DW2 and Suresh Kumar as DW3.

Dr. Parveen Hans, learned counsel appearing on behalf of the appellants-defendants submitted that respondents-plaintiffs failed to prove the readiness and willingness as the suit was belatedly filed after few days of expiry of agreement to sell. They sought intervention of the Court for obtaining signatures for the purpose of comparison but the defendant alleged that he did not know English

and can give specimen in Hindi, as agreement to sell bore signature in English. In respect of other sale deed, there was shortfall and the brother has already approached this Court and the regular second appeal is pending. Plaintiffs did not disclose previous agreement to sell, therefore, it was a mala fide attempt. The agreement did not bore the signature of vendee, which itself is a suspicious circumstance.

I am afraid aforementioned argument is not sustainable showing reluctance in giving signatures in the manner and mode as reflected in the agreement to sell culminates into drawing of adverse inference as per Section 114(g) of the Indian Evidence Act. No sane person on acquiring knowledge of misuse of papers would not sit idle, rather would make earnest effort by showing annoyance and its denial. Once agreement to sell had been denied, the plea of refund cannot also be taken. Even stand of the defendant qua refund of ₹20 lakhs cannot be accepted for the simple reason that there is no evidence of refund of ₹20 lakhs. All these factors lead to irresistible conclusion that there was intention to enter into agreement to sell. Previous agreement to sell was admitted by the defendant.

The argument of Mr. Hans that the agreement did not bear signature of the vendee must fail, for, the agreement to sell cannot be thrown out in the absence of signature of vendee. It is only vendor's signatures which are required. This view of mine is derived from the judgment rendered by Hon'ble Supreme Court in **Alka Bose Vs. Parmatma Devi and others (2009) 2 SCC 582.**

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts

below, 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

May 14, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No