

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

116

RSA No.526 of 2017 (O&M)

Date of decision: 29.01.2019

Hoshiara

..... Appellant

Versus

Jagmal

..... Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. G.S. Duhan, Advocate  
for the appellant.

Mr. D.P.S. Bajwa, Advocate  
for the respondent.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell dated 09.07.2007.

In the written statement, defendant had taken a stand that the agreement to sell is forged as he is in the habit of drinking. It is further pleaded that he had demanded Rs.40,000/- from one Mahipal who had taken him to a property dealer i.e. plaintiff, brother of Mahipal and while handing over Rs.25,000/-, his signatures were obtained on blank papers.

Both the Courts on appreciating the evidence have found that the execution of the agreement to sell and payment of earnest money is proved. It will be noted that in the agreement to sell, Rs.1,50,000/- is admitted to be received at the time of execution of the agreement to sell.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant submitted that although, in the agreement to sell, the total sale consideration is Rs.8,50,000/-, however, in the plaint filed in the Court, the amount mentioned is Rs.9,00,000/-. He further submitted that although, name of the plaintiff is Jagmal but he has signed only as Jag Singh.

As regards first argument, both the Courts have found that the total sale consideration mentioned in the plaint is result of typographical mistake as specific performance of the agreement to sell dated 09.07.2007 has been sought and in the agreement to sell, total sale consideration is recorded as Rs.8,50,000/-. A typographical mistake in the plaint cannot be used to defeat the right to which the plaintiff is otherwise entitled to.

As regards second contention, it will be noted that the signatures of a person are not necessarily required to contain full name. The plaintiff has signed the agreement to sell as Jag Singh, although, his name is Jagmal. In the agreement, it is mentioned that the agreement to sell is entered into Jagmal son of Badan Singh. The suit has been filed by Jagmal son of Badan Singh. As per agreement to sell, he is resident of village Kabarchha which is also recorded in the agreement to sell, therefore, there is no doubt about the identity of the property.

Learned counsel for the appellant further submitted that the signatures of the defendant-appellant were obtained on blank papers. This Court has looked at the agreement to sell from the trial Court record at page 43. The defendant-appellant has signed twice. One across the non-judicial

stamp pasted on the paper in a manner that half of the signatures are coming on the paper whereas remaining half are coming on the non-judicial stamp. Still further, Hoshiara, the defendant-appellant has also signed at the end of the agreement to sell where narration comes to an end. The defendant-appellant has failed to prove that the aforesaid agreement is result of fraud or forgery.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

**CM-1141-C-2017**

Prayer in the application is for condonation of delay of 453 days in filing the appeal. Reply to the application has been filed, however, since this Court has already examined the appeal on merits and dismissed the same, therefore, no order on the application is required to be passed.

**29.01.2019**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No