

In the High Court of Punjab and Haryana at Chandigarh

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RSA-2767-2018 (O & M)

Date of Decision: February 14, 2020

GAJJAN SINGH

.....APPELLANT

VERSUS

DAYAL SINGH AND ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the appellant.

ANUPINDER SINGH GREWAL, J (ORAL)

The appellant has challenged the impugned judgments of the Courts below whereby the suit for specific performance of the agreement to sell has been dismissed.

Learned counsel for the appellant contends that the Court has erred in dismissing the suit by recording that the attesting witnesses were related to the appellant-plaintiff, there is inconsistent spacing in the agreement to sell and that the appellant could not explain his financial capacity to pay ₹3 lacs as earnest money.

Heard.

The appellant-plaintiff had filed a suit for joint possession by way of specific performance of the agreement to sell dated 08.12.2006 between him and one Harbhajan Kaur for land measuring 04 kanals out of land measuring 07 kanals 12 marlas bearing khasra No.7/18 as per jamabandi for the year 2006-07 situated at Village Post Office Rayya, Tehsil Baba Bakala, District Amritsar.

Harbhajan Kaur is stated to have expired on 22.05.2009. She had executed a sale deed in favour of respondent No.2 for the suit land on 22.01.2009 for a consideration of ₹6,74,000/-. The instant suit had been filed by the appellant on 26.08.2010.

The Courts below perused the agreement to sell (Ex.P1) and have recorded findings of fact that the spacing in the three pages of the agreement to sell are inconsistent and it is apparent that after obtaining the thumb impressions, the text of the agreement to sell has been typed.

Learned counsel for the appellant has furnished copy of the agreement to sell (Ex.P-1) before this Court. The copy of the agreement to sell (Ex.P-1) has been perused and it is apparent that in all the three pages of the agreement to sell, the spacing is inconsistent. The stamp vendor and the typist, who had typed the agreement, had not been examined.

Furthermore, the appellant-plaintiff had stated that he had arranged the earnest money after selling his crops, selling the jewellery of his wife and raising money from his other sources but in his cross examination he has stated that he does not know the name of the commission agent to whom he has sold his crop and he also does not know the name of the jeweller to whom the jewellery had been sold.

There is no denial that merely because witnesses to the agreement to sell are related to a party would not by itself be a factor which would be decisive for arriving at the conclusion that the agreement to sell is fabricated but in the instant case, the totality of the aforementioned circumstances and evidence on record I do not find any illegality in the concurrent findings of fact recorded by the Courts that agreement to sell was forged and fabricated.

It is apt to notice that during the life time of Harbhajan Kaur, suit for specific performance was not filed. The alleged agreement to sell is stated to have been executed on 08.12.2006 and she expired on 22.05.2009 and the instant suit for specific performance had been filed only on 26.08.2010. It has also come on evidence that respondent No.2-Manjit Singh, who had purchased the suit land by the sale deed dated 22.01.2009 had stated that he had taken possession of the land and had carried out construction including laying of the sewerage line.

Consequently, I do not find any merit in the appeal which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

February 14, 2020
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No