

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

RSA-5019-2018 (O&M)
Date of decision: 08.09.2021

KHUSHI RAM @ RAJESH

...Appellant

Versus

MAHABIR

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present- Mr. VK Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Vikram Punia, Advocate
for the respondent.

ANIL KSHETARPAL, J.

The defendant in a suit for specific performance of the agreement to sell has assailed the correctness of the concurrent judgments and decrees passed by the Courts below while granting alternative relief of recovery of Rs.79,50,000/- along with agreed interest @ 18% per annum to be calculated from 29.09.2014 till passing of the decree and thereafter future interest @ 6% per annum till realisation.

Some facts are required to be noticed.

The plaintiff (respondent) filed a suit for specific performance of the contract dated 29.09.2014 and in the alternative, prayed for passing a decree of recovery of Rs.91,04,200/- along with the agreed rate of interest. The defendant denied the transaction and the existence of his signatures on the agreement to sell. While asserting that he is not acquainted with the art

of reading or writing, either in the English language or in any of the other languages, claimed that the agreement to sell and the receipt of any amount as alleged are false and forged documents. The plaintiff in order to prove his case examined PW3 Pale Ram, Notary Public who also produced his notarial register containing the entry of the agreement to sell duly signed by the defendant. The plaintiff also examined PW4 stamp vendor, PW6 Om Parkash Hooda, attesting witness and PW7 handwriting and finger print expert to prove the agreement. On the other hand, only the defendant himself deposed in evidence in the defence. He denied that he is also known as Rajesh Rathi. In the suit, his name is Khushi Ram. Both the Courts on appreciation of evidence have found out that the defendant is a guileful person who has gone to the extent of denying his bank account, his own photograph, wife's & children's name. The Courts further found that the defendant is a post-graduate and in fact, also known as Rajesh Rathi. Both the Courts further found out that the agreement to sell was in fact a security transaction in order to secure the recovery of the amount. Thus, both the Courts rather than granting the relief of the specific performance of the agreement to sell, in the alternative relief, decreed the suit for recovery of the aforementioned amount. Both the Courts, on carefully reading the agreement to sell Ex.P3, have found out that the real intention of the agreement was to secure the amount. On the aforementioned agreement to sell, the defendant has signed as Rajesh as well as Khushi Ram. Both the signatures are in proper English language. Along with the agreement, the

details of the amount paid by the plaintiff to the defendant has been attached. A perusal whereof shows that on five different occasions, the amount of Rs.20,00,000/-, Rs.2,50,000/-, Rs.4,00,000/-, Rs.5,00,000/- and Rs.5,00,000/- were transferred through the bank transactions.

Heard the learned counsel representing the parties and with their able assistance, perused the paper book as well as the records of the Courts below which has been requisitioned.

It is important to note that during the pendency of the appeal, the defendant has filed an application under Order 41 Rule 27 CPC for seeking permission to lead additional evidence in order to produce bank statements which have been annexed as Annexures A6 and A7. A perusal of the Annexure A6, the aforesaid bank statement is with respect to the account of Rajesh Rathi in Model Town Branch of HDFC bank at Rohtak. Annexure A7 is with respect to the bank account of Mukesh in the same bank. When the defendant appeared in evidence, the plaintiff summoned the bank official from the same branch of the bank. The plaintiff denied that he is also known as Rajesh Rathi while taking a stand that he does have account in the bank. He went on to the extent of refusing to identify his own photograph and denied the name of his wife and children. Once defendant has denied that he is not the account holder of the aforesaid account, now as a consequence, the defendant can be permitted to take a summersault. Hence, he does not deserve the permission to lead additional evidence.

The learned senior counsel representing the appellant contends

that the plaintiff, notary public and Om Parkash Hooda, attesting witnesses have admitted that no consideration was paid at the time of execution of the agreement, therefore, the Courts have erred in decreeing the suit for the recovery of the amount. It may be noted here that in the present case, it has come in evidence that the plaintiff paid Rs.79,50,000/- to the defendant for purchase of land in the State of Chhattisgarh. As already noticed, the amount was paid on the different dates and out of the aforesaid, five transactions were made through the RTGS mode. Furthermore, both the Courts have concurrently found out that on execution of the agreement Ex.P3, the defendant acknowledges that he has to repay the amount of Rs.79,50,000/-. In such circumstances, from the admission of the plaintiff, it comes out that the payment of the amount had already been made before signing the agreement.

The learned counsel for the appellant has further submitted that since the scribe of the agreement to sell Ex.P3 has not been examined therefore, an adverse inference is required to be drawn against the plaintiff. It may be noted here that the agreement has been proved by examining notary public, attesting witness, stamp vendor, handwriting and finger print expert. The plaintiff has also proved the agreement. His evidence was sought to be discredited by putting leading questions, however, learned counsel for the defendant failed to impeach the credibility of the evidence of the plaintiff. In the facts of the case, non examination of the scribe is not significant.

Keeping in view the aforesaid discussion, the application for permission to lead additional evidence as well as the appeal are found to be without merit. Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

08.09.2021
ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No