

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 429 of 2022 (O&M)

Date of Decision: 02.03.2022

Iqbal Kaur and Another

... Appellant(s)

Versus

Rattan Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aditya Dassaur, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The defendants, in a suit for possession by way of specific performance of agreement to sell, assails the concurrent findings of fact, arrived at by both the Courts below, while decreeing the suit.

2. The execution of the agreement to sell on receipt of the earnest money is not disputed by the defendants. The defendants are disputing the correctness of the writing dated 05.04.2013, whereby the period for execution of the sale deed was extended from 10.04.2013 to 10.05.2013 on payment of ₹2,00,000/-. The defendants, in order to prove that the aforesaid writing is not signed by them, examined Mr. Kranti K. Sharma, Handwriting and Fingerprint Expert as DW.1.

3. The learned counsel representing the appellants contends that both the Courts below have failed to examine the effect of the opinion expressed by the Handwriting and Fingerprint Expert to the extent that the

writing dated 05.04.2013 is not thumb marked/signed by the defendants. He

further submits that no reason for extending the period for execution of the sale deed has come on record.

4. On 05.04.2013, the two documents were executed. The first was the writing extending the agreed date from 10.04.2013 to 10.05.2013 for execution and registration of the sale deed. The second was the receipt, allegedly issued by the defendants acknowledging the additional payment of ₹ 2,00,000/-. Admittedly, the signatures on the aforesaid receipt (Ex.P4) has not been compared by an Expert. Further, the opinion of the Expert is not binding. The witness to the writing, dated 05.04.2013 has appeared in support of the case of the plaintiff. Despite the searching questions in the cross-examination, the credibility of the aforesaid witness could not be impeached.

5. Smt. Kamaljit Kaur (the defendant No.2) has also signed the writing dated 05.04.2013 and also the receipt of the even date. She has not stepped into the witness box. The defendant No.1, while appearing in the witness box as DW.2, denied her signatures on the written statement, filed by her along with Smt.Kamaljit Kaur.

6. On preponderance of the evidence, both the Courts below have drawn the concurrent conclusion.

7. It is evident that the First Appellate Court has discussed the report of the Handwriting and Fingerprint Expert, in the para 15 of its judgment. It has also been noticed that the defendants have failed to get their signatures, appearing on the receipt dated 05.04.2013, compared. In such circumstances, it would not proper to hold that the report of the Handwriting and Fingerprint Expert has not been discussed.

8. As regards the next argument of the learned counsel that no reason for extending the period has been disclosed by the plaintiff, it would be noticed that the defendants are altogether denying the execution of the writing dated 5.04.2013. In the regular second appeal, this Court cannot permit the appellants to take up an entirely new plea.

9. Keeping in view the aforesaid fact, no ground to interfere is made out. Consequently, the present appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 02, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No