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

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**RSA No.4839 of 2019(O&M)
Date of Order: 19.04.2022**

Ram Kunwar

..Appellant

Versus

Shiv Narain

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of fact arrived at by the courts below, the defendant has filed the present appeal.

Plaintiff and the defendant are sons of late Sh. Fateh Singh. Defendant became owner of the shop by virtue of transfer deed dated 09.05.2002. On 23.05.2007, he executed an agreement to sell in favour of the plaintiff with respect to the complete shop measuring 18.33 Sq. Yds. for a total sale consideration of Rs.10,00,000/-. He received Rs.3,50,000/-. Subsequently, on the intervention of the respectables, the previous agreement to sell dated 23.05.2007 was cancelled and a fresh agreement to sell dated 22.06.2009 was executed with respect to ½ share of the shop for a total amount of Rs.5,00,000/-. The remaining amount of Rs.5,00,000/- was also paid at the time of execution of the agreement to sell to the defendant. It was agreed that the plaintiff can get the sale deed executed at any point of time.

The defendant contested the suit alleging that he neither entered into any agreement to sell nor received any earnest money.

Both the courts on appreciation of evidence have found that the plaintiff has proved his case and the defendant entered into an agreement to sell dated 22.06.2009.

This Bench has heard the learned counsel representing the appellant and with his able assistance perused the paper book.

The learned counsel representing the appellant contends that the agreement to sell was not scribed on a proper stamp paper. He further contends that the agreement to sell has not been proved as the scribe has not been examined.

When the agreement to sell Ex.P2 was admitted in evidence, the defendant did not object to its admissibility. Further, this point was never raised before the courts below. For the argument sake, even if an agreement to sell has been scribed on a stamp paper of insufficient amount, the validity of the contract between the parties does not get adversely affected. The stamp duty is payable under the Stamp Act, 1899, which is a fiscal statute. Deficiency in stamp duty is a curable defect.

As regards the second argument of non-examination of scribe, it may be noted here that the agreement to sell is not required to be attested by witnesses. In any case, Sh. Ram Narain Saini, witness of the agreement to sell has been examined as PW4. Shri Ram Narain Saini, has signed the agreement to sell itself as a witness. Hence, non-examination of scribe in evidence does not affect the merits of the case.

Hence, no ground to interfere is made out.

Dismissed.

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

April 19, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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