

RSA-5731-2019 (O&M)

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

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RSA-5731-2019 (O&M)
Reserved on : 18.07.2022
Date of decision : 25.07.2022

Satish Jain

...Appellant

versus

Gujesh Kumar Sharma

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Daljeet Singh Virk, Advocate for
Mr. C.S. Jattana, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgements and decrees passed by both the Courts below decreeing the suit for specific performance and permanent injunction filed by the plaintiff-respondent.

The plaintiff-respondent had filed suit for possession by way of specific performance and permanent injunction averring in the plaint that the defendant-appellant had entered into an agreement to sell with the plaintiff-respondent on 27.09.2008 in respect of a shop for a total consideration of Rs.10 lakhs out of which Rs.8 lakh was paid as earnest money and a separate receipt was executed by the defendant-appellant at the end of the agreement. The last date for execution and registration of the sale deed was 30.01.2009. On 30.01.2009 the plaintiff-respondent remained present in the office of the Sub Registra, Kharar along with the balance amount in the shape of Draft No.976968

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drawn on Punjab and Sind Bank, Kharar. However, the defendant-appellant failed to turn up. The plaintiff-respondent also got his presence marked at the Tehsil Complex, Kharar.

The defendant-appellant contested the suit and filed a written statement denying the execution of the agreement to sell dated 27.09.2008. The receipt of earnest money was also denied as was the date fixed for execution of the sale deed.

On the basis of the pleadings of the parties and the evidence on the record, the suit of the plaintiff-respondent was decreed by the Trial Court vide judgment and decree dated 31.03.2016. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant which was dismissed by the lower Appellate Court vide judgment and decree dated 18.09.2019. Hence the present regular second appeal.

In the present case both the Courts below have concurrently held that the execution of the agreement stood proved by the plaintiff-respondent by leading cogent evidence. The plaintiff-respondent examined the marginal witness (PW-4) of the agreement to sell as also produced the handwriting expert (PW-5) who compared the signatures of the defendant-appellant on the agreement to sell with his standard signatures and was of the opinion that the disputed signatures on the agreement to sell were that of the defendant-appellant. The stamp vendor was also examined as PW-3 who stated that the stamp paper on which the agreement to sell Ex.P1 had been written was sold by him and the reverse of the agreement to sell bears the signatures of the defendant-appellant. No evidence was led by the defendant-appellant to show that the agreement to sell was forged

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and fabricated. In fact, no handwriting expert was examined by the defendant-appellant to prove that the signatures on the agreement to sell were not his.

When the matter was taken up 27.04.2021 by a co-ordinate Bench of this Court, the following order was passed :

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Suit for specific performance has been decreed against the appellant by both the Courts below. The property in dispute is a shop measuring 15’ x 40’. Agreement to sell is dated 27.9.2008 and earnest-money of Rs.8 lacs has been received by the defendant-appellant. The total sale consideration is Rs.10 lacs.

Learned counsel for the appellant submits that the shop in dispute is the only shop of the appellant and his livelihood is dependent thereupon. Thus, he is willing to refund the earnest-money alongwith interest to be determined by this Court.

Thus, in case, the appellant is willing to deposit a sum of Rs.20 lacs by way of demand draft in this Court within seven days from today, this Court shall consider issuing notice to the respondents.

Adjourned to 6.5.2021.”

Learned counsel for the defendant-appellant has stated that the said amount has not been deposited by the defendant-appellant.

In view of the above as also the fact that there was no cogent evidence led by the defendant-appellant to prove that the agreement to sell was

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forged and fabricated, I do not find any illegality or infirmity in the concurrent findings of fact recorded by both the Courts below. No question of law, much less any substantial question of law, arises in the present appeal. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

25.07. 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO