

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

RSA No. 268 of 2022 (O&M)

Date of decision: 03.05.2023

Kheta Ram (since deceased) through his LRs

..... Appellant

Versus

Atma Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Deepak Kaushal, Advocate, for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellant has challenged the judgments and decrees of the courts below whereby the suit filed by the respondent-plaintiff for possession by way of specific performance of the agreement to sell dated 27.05.2015 has been decreed.

2. Learned counsel for the appellant submits that the respondent-plaintiff could not prove his financial capacity to enter into the agreement and to pay a sum of Rs.26,00,000/-. The signatures of the appellant-defendant had been taken fraudulently. The scribe did not produce the register, as it was stated to have been lost. There is a material discrepancy in the evidence inasmuch as the respondent-plaintiff had stated that the amount was paid at his home in village Abubshaher while PW7 Rajiv, who was a witness to the agreement to sell dated 27.05.2015, had stated that the transaction had taken place at Dabwali.

3. Heard. The respondent-plaintiff is stated to have entered into an agreement to sell on 27.05.2015 regarding the land comprised in Khewat No.294, Khata No.368 Kittas 4 area measuring 19 kanal 8 marla to the extent

of 7 kanal and in Khewat No.1041 kittas 5 area measuring 25 kanal 6 marla to the extent of 9 kanal total area measuring 16 kanal situated within the revenue estate of village Abubshaher, Tehsil Dabwali, District Sirsa, as per jamabandi for the year 2011-12, for a sale consideration of Rs.30,00,000/-. An amount of Rs.26,00,000/- was stated to have been paid by the respondent-plaintiff to the appellant-defendant as earnest money in the presence of witnesses while entering into the agreement to sell dated 27.05.2015. The target date for execution and registration of the sale deed in favour of the respondent-plaintiff was fixed as 14.10.2015, but later with mutual consent of the parties, the time was extended till 16.11.2015. The respondent-plaintiff had appeared before the Registering Authority on 16.11.2015 and marked his presence while the appellant-defendant did not do so. He has placed on record an affidavit (Ex.PW1/A) endorsed by the Sub-Registrar which indicates that the respondent-plaintiff had visited the Tehsil office on 16.11.2015 along with balance sale consideration and other charges to get the sale deed executed. He had issued legal notice dated 02.12.2015, which was proved as Ex.PW6/B, and also proved its postal receipt as Ex.PW6/C. Another legal notice dated 10.02.2016 was issued, which was proved as Ex.PW6/D and its postal receipt has been proved as Ex.PW6/E. Envelop of the registered letter was proved as Ex.PW6/F and acknowledgement as Ex.PW6/G.

4. The Deed-writer, namely, Kishore Chand, had been examined as PW3. He had stated that the agreement to sell dated 27.05.2015 was entered into between the parties and the same was entered in his register at serial No.311 dated 27.05.2015. He proved the same as Ex.PW3/A. He also proved a copy of the register as Ex.PW3/B. The Stamp Vendor, namely, Gian Chand

had been examined as PW2. He had stated that the respondent-plaintiff had purchased stamp paper from him on 27.05.2015.

5. PW7 Rajiv had categorically stated that the respondent-plaintiff was owning 13-14 acres of land, as he along with his brother owned a total of 65 acres of land. He had also produced on record Form-J which indicated that he was having agricultural income and, therefore, I do not find any merit in the contention of learned counsel for the appellant-defendant that the respondent-plaintiff could not prove his financial capacity to enter into the agreement to sell dated 27.05.2015.

6. It is apt to notice that the appellant-defendant besides tendering his own affidavit has not led any other evidence to prove that his signatures were obtained fraudulently. It is easy to raise a plea of fraud, but the same has to be proved by leading cogent evidence. In the absence of credible evidence, this plea does not hold any water.

7. In view of the above, the respondent-plaintiff has been able to prove his case for possession by way of specific performance of the agreement to sell dated 27.05.2015 by leading credible evidence. Therefore, I do not find any illegality in the judgments and decrees passed by the courts below. The appeal stands dismissed.

8. Pending application(s), if any, shall also stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

03.05.2023
Ramesh

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