

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

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2023:PHHC:093019

RSA-1868-1990

Date of decision: 24.07.2023

MAKHAN SINGH AND ORS.

..Appellants

Versus

GURTEJ SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S. Brar, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. While challenging the concurrent findings of fact arrived at by the Courts below, the defendants have filed this second appeal. The plaintiff-Sh. Gurtej Singh filed a suit for specific performance of agreement to sell dated 05.06.1985 in respect of agricultural land measuring 44 kanals situated in revenue estate of Tarkhanwala @ Bhagwanpura. The plaintiff also prays for the grant of decree of possession and in the alternative, a suit for recovery of Rs.40,000/-. The agreement to sell is stated to have been executed by defendant No.1 on receipt of Rs.20,000/- as earnest money while agreeing to sell 44 kanals land at the rate of Rs.15,000/- per acre. It was agreed that the sale deed would be executed on or before 10.09.1985. The defendants did not visit the office of the Sub-Registrar for the execution of the sale deed, whereas, the plaintiff along with the balance sale consideration and necessary charges for registration and stamp duty attended the office of the Sub-Registrar and got his affidavit attested because the defendants did not come forward to honour the agreement to sell. The suit was filed on 26.09.1985. The defendant No.1 while contesting the suit alleged that the property being a co-parcenary property, could not be

alienated and him being illiterate person had in fact taken a loan of Rs.20,000/- on execution of the pro-note. The plaintiff proved the execution of the agreement to sell by examining PW-2 Sh. Vinod Kumar scribe, PW-3 Sh. Harnek Singh marginal witness and the plaintiff, whereas, defendant No.1 while appearing as witness in his own case denied the execution.

2. On appreciation of evidence, the trial Court decreed the suit which as noticed above was upheld by the First Appellate Court.

3. It has been noticed by the First Appellate Court that defendant No.1 was in need of Rs.40,000/- and, therefore, he executed two documents on the same day namely agreement to sell and pro-note. The Court noticed that since defendant No.1 did not deliver possession, the plaintiff was correct in refusing to pay the entire sale consideration at the time of agreement to sell and hence two different documents were executed on the same day.

4. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paperbook.

5. Initially, the respondent (plaintiff) was represented by a counsel who unfortunately passed away during the pendency of the suit. Taking note of the aforesaid fact, notice was issued to the plaintiff, and he is reported to have been served through his son, however, he still remains unrepresented. Since, This appeal is pending for the last 33 years in this Court, hence, the learned counsel representing the appellants was requested to come prepared for arguments.

6. The learned counsel representing the appellants while drawing the attention of the Court to the copy of the agreement to sell (Ex.P-4) submits that on the first page of the agreement to sell, efforts have been

made to conclude the same although, there are two separate leaf of agreement to sell. It is submitted that the first page of the agreement to sell is recited on a non-judicial stamp paper of Rs.2/-, whereas, the second page of non-judicial stamp paper of Rs.50/- is blank. This Court has seen the scanned copy of the record available on the website of this Court. It is evident that the agreement to sell is thumb marked by late Sh. Bali Singh at the end of first page. His thumb impression is in the middle, whereas, the thumb impression and signatures of two marginal witnesses are on the left and right hand side of the thumb impression of late Sh. Bali Singh. On the left hand margin, the scribe has signed the agreement to sell by disclosing serial number of his note book. On the reverse side of the first page, the thumb impression of late Sh. Bali Singh is also appended when he purchased the stamp paper on the same date i.e. 05.06.1985. The stamp vendor has also entered the sale of the stamp paper in his note book with proper entry. No doubt the 2nd page is blank, however, that itself is not sufficient to doubt the authenticity of a written contract between the parties.

7. The civil cases are decided on preponderance of probabilities. Both the Courts on appreciation of evidence have concluded that the plaintiff has been improving the agreement to sell, payment of earnest money, his readiness and willingness to perform his part of the contract. Furthermore, the suit was filed within 15 days from the date when the sale deed was to be executed.

8. Keeping in view the aforesaid facts, no ground to interfere with the concurrent findings of fact.

9. Dismissed.

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

July 24th, 2023

(ANIL KSHETARPAL)
JUDGE

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>