

2023:PHHC:085569

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

RSA-489-2013 (O&M)
Date of decision: 05.07.2023

Davinder Singh and another

..Appellants

Versus

Mehal Singh and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Arun Bansal and
Mr. Anubhav Bansal and
Ms. Anju, Advocates for the appellants

Mr. N.K.Manchanda, Advocate for respondent no.2 to 4

ANIL KSHETARPAL, J (Oral)

1. Challenging the correctness of the concurrent findings of the facts arrived at by the courts below, defendant no.1 and 2 have filed this Regular Second Appeal. The plaintiff's suit for the grant of decree of possession by way of specific performance of the agreement to sell has been partly decreed while ordering refund of the earnest money alongwith interest. The property in dispute already stands sold in favour of defendant no.3 to 5. In order to prove written agreement to sell, the marginal witness as well as scribe were examined by the plaintiff.

2. On the other hand, defendants while defending the suit, claim that agreement to sell is forged and fabricated document. It is claimed that defendants are farmers and this agreement to sell has been forged in connivance with their commission agents.

3. The learned trial court found that defendant no.2 – Gurinder

Singh was not major on the date when the agreement to sell was executed. Thus, the court refused to grant a decree for specific performance of the agreement to sell and granted alternative relief of refund of the earnest money alongwith interest. The aforesaid judgment of the trial court has been upheld by the First Appellate Court on re-appreciation of evidence.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned record.

5. Learned counsel representing the appellants with all vehemence at his command submits that the agreement to sell is a forged document as the handwriting and finger print expert has opined that the defendants did not sign the document. He further submits that transfer of the consideration i.e earnest money has not been proved as the scribe has stated that the amount was not paid in his presence whereas the plaintiff has claimed that the amount was paid on the same day in the presence of the scribe.

6. This Court has considered the submissions. Report of the handwriting and finger print expert is an opinion which is not binding on the court. Before coming to conclusion, the court is required to examine the report. The handwriting and finger print expert was engaged by the defendants. In the present case, direct evidence namely the statement of the marginal witness as well as scribe proved the execution of the agreement to sell. In such circumstances, conclusion of the courts below

while disbelieving the opinion does not require interference. As regards the argument that there is a difference in the statement of the plaintiff and the scribe with regard to the payment of the amount, it may be noted that with the passage of time, the memory of a human is bound to get blurred. There is a written contract between the parties acknowledging receipt of Rs.2,40,000/-. Such written contract in the absence of any other evidence is required to be accepted. A perusal of the agreement to sell proves that it was executed on a non-judicial stamp paper of Rs.50/-. The stamp paper was purchased by Davinder Singh for execution of the agreement to sell on 12.06.1997, the day on which the agreement to sell was executed. Moreover, on appreciation of evidence, both the courts have already returned a finding of fact.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Hence, dismissed.

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

05.07.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE