

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

RSA-1258-2018 (O&M)

Date of Decision: September 14, 2023

TARLOCHAN SINGH

..... Appellant

Versus

NARINDER SINGH

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sarju Puri, Advocate for the appellant.

Mr. R.D. Rattewal, Advocate for respondent.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 29.11.2013 and 31.10.2017 passed by the Courts below whereby suit for possession by way of specific performance as well as permanent injunction filed by respondent-plaintiff has been decreed against appellant-defendant.

2. Briefly stating, based on an agreement to sell dated 28.05.2008, regarding 8 Kanals of land situated in Village Mai Ditta, Tehsil and District, Nawanshahr, the respondent-plaintiff filed a suit for possession by way of specific performance with the averments that the total sale consideration was Rs.8,00,000/- with Rs.3,75,000/- as the earnest money with 31.10.2008 being the target date which was later extended up to 31.12.2008. It was stated that since the appellant-defendant failed to execute the sale deed thereby compelling the respondent-plaintiff to file the suit besides praying for permanent injunction as well as for restraining respondent-defendant from interfering in his peaceful possession.

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3. Upon notice, the appellant-defendant though admitted his thumb impressions on the alleged agreement, however, denied its execution as pleaded in the plaint while submitting that his thumb impressions were obtained on certain blank papers by the respondent-plaintiff who works as a travel agent and the appellant-defendant had visited him for sending his son abroad, thus, the agreement in question was forged and fabricated one.

4. The trial Court vide judgment and decree dated 29.11.2013 decreed the suit filed at the instance of respondent-plaintiff. Aggrieved thereof, the appellant-defendant filed First Appeal, the same was dismissed by the First Appellate Court vide judgment and decree dated 31.10.2017.

5. Impugning the aforementioned judgments and decrees passed by Courts below, learned counsel for the appellant-defendant vehemently submits that the agreement in question was never proved on record. Referring to the agreement (EX.P-1), learned counsel also submits that though the names of the attesting witnesses were typed on the agreement, however, the same was never signed by them. He further submits that the readiness and willingness as envisaged under Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as 1963 Act) was not established at the hands of respondent-plaintiff and thus the suit could not have been decreed. In addition, learned counsel for the appellant also points out that the appellant-defendant was able to establish hardship in his favour and thus relying upon Section 20 of 1963 Act submits that the suit could have been decreed regarding the

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alternate relief rather than awarding decree of specific performance in favour of respondent-plaintiff. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the records. I am unable to find substance in the submissions made on behalf of the appellant.

7. Mere non-signing by the attesting witnesses over the agreement in question would not invalidate the contract as there is no statutory requirement in law to get an agreement to sell attested by the witnesses. In fact, the witnesses to an agreement are merely marginal witnesses and not the attesting witnesses. Nonetheless, a perusal of the agreement in question Ex.P-1 even shows that its last page was duly signed by the marginal witnesses and thus the plea of non-signing was not made out from the facts in hand. Reliance in this regard can be placed upon a decision of Hon'ble Supreme Court in case of "**Ram Khilona Vs. Sardar, 2002 AIR (Supreme Court) 2548**" wherein also it has been observed that the document/agreement of sale does not require any marginal witnesses for its validity in law. In the present case, the appellant-defendant has even admitted his thumb impressions over the document in question though having raised the plea of fraud while stating that the respondent-plaintiff was working as a travel agent, although the appellant-defendant has not been able to establish it on record through any cogent evidence. Moreover, even the scribe/deed writer of the agreement in question has appeared as PW3 who has duly proved the entry regarding agreement in question (Ex.P-1), receipt of earnest money (Ex.P-2) as well as the document regarding extension of

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target date in his register at serial No.119, 118 and 124 respectively. In the present case, concurrent findings of fact has been recorded by both the Courts below as regards the valid execution of agreement to sell in favour of respondent-plaintiff as well as the earnest money which even carry the photograph of the appellant-defendant.

8. Regarding the readiness and willingness of the respondent-plaintiff, though the First Appellate Court has recorded that once the appellant-defendant denied his thumb impressions over the agreement in question, he was not entitled to raise this plea which cannot be subscribed in law as Section 16 of the Specific Relief Act, 1963 itself enjoins the purchaser to establish his readiness and willingness to perform his/her part of the agreement regarding which one cannot seek any escape merely on account of denial of execution of the agreement by the vendor/owner. In this regard, support can be drawn from the judgment of this Court in the case of **“Gurmail Singh Vs. Jagdish Pal Singh 2018(3) RCR (Civil) 658”**.

9. Be that as it may, from the evidence available on record in the shape of deposition of the respondent-plaintiff as PW1, besides the statement of Harjinderpal Singh, Lambardar PW-4, who categorically deposed that the respondent-plaintiff was an agriculturalist having 14-15 acres of land and earning handsomely, not even a suggestion to the contrary was put to him in his cross-examination, meaning thereby admitting the same as a matter of fact. Besides it, the prompt filing of suit in the present facts, wherein the extended target date was 31.12.2008 and the suit was filed on 17.02.2009 i.e. within a span of 2

months only; sending of notice dated 09.01.2009 (Ex.P-7), the readiness and willingness on the part of respondent-plaintiff in order to perform his part of the agreement was duly established on record. Again, no substantial evidence from the records was even pointed out to compel this Court to make a different opinion than the concurrent finding recorded by the Courts below as regards the readiness and willingness of respondent-plaintiff.

10. Last but not the least, I am unable to find substance in the submissions made on behalf of the appellant as regards the plea of hardship which has been raised by placing reliance upon Section 20 of 1963 Act as the same was never raised specifically in the written statement besides merely mentioning therein that the land in question was the source of livelihood of appellant-defendant. Thus, in the given facts and circumstances, the same cannot be dealt with at this belated stage.

11. In view of the discussion made hereinabove and there being no illegality or perversity in the concurrent findings of facts recorded by Courts below as regards the valid execution of agreement to sell dated 28.05.2008 as well as the readiness and willingness of the respondent-plaintiff, the appeal being devoid of merits is dismissed.

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

14.09.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

