

2023:PHHC:150056

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

RSA-6493-2018 (O&M)
Date of decision: 23.11.2023

Puran Singh

....Appellant

Versus

Naresh Gaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aditya Jain and
Mr. S.S.Modgil, Advocates for the appellant

Mr.Ashok Kaushik, Advocate for the applicant
in CM-12569-C-2023

ANIL KSHETARPAL, J (Oral)

CM-12569-C-2023

1. Learned counsel representing the applicant prays for permission to withdraw the application.
2. Ordered accordingly.

Main case

3. In this Regular Second Appeal, the concurrent findings of fact arrived at by the courts below is challenged by defendant no.1. The plaintiff's suit for possession, by way of specific performance of the agreement to sell, has been decreed by both the courts below.

4. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

5. Learned counsel representing the appellant made the following submissions:-

i) The thumb impression and signatures of the appellant were taken on the blank papers, which were later on converted into an agreement to sell.

ii) Ms. Kusum, the subsequent purchaser vide sale deed dated 08.12.2014, has not been impleaded as a party in the suit.

iii) The date on which the agreement to sell was executed, Sh. Puran Singh was owner of only half share of the property.

iv) Sh. Puran Singh, the appellant was not the owner of the property as he was a Bhondedar.

6. This Court has considered the submissions made by the learned counsel representing the appellant.

7. Learned counsel representing the appellant has produced a photocopy of the agreement to sell. It is evident that it has been scribed on the non-judicial stamp paper of Rs.20/-. It is scribed on 2 pages. The first page is thumb marked by the appellant at the bottom alongwith his signatures. His photograph is also pasted on the first page and the appellant has thumb marked it in a manner that half of his thumb impression comes on the stamp paper whereas the remaining half is on the photograph. The second page

of the agreement to sell is again thumb marked as well as signed by the appellant. On 07.10.2009, the appellant purchased the stamp paper for execution of the agreement to sell. He has also appended his thumb impression at the time of purchasing the stamp paper.

8. In these circumstances, it would not be appropriate for the appellant to contend that the agreement to sell has been scribed on the blank papers, which were already signed. Both the courts have already found that the agreement to sell is genuine.

9. The next argument of the learned counsel has no substance as Ms. Kusum purchased the property during the pendency of the suit and therefore, she is governed by the rule of lis pendens. The next argument put forth by the learned counsel also holds no firm ground as on the day, the agreement to sell was executed, Sh. Puran Singh, was the owner of the half share of the property. The remaining half share of the property was vested with his uncle, who transferred his share in favour of the appellant. Section 43 of the Transfer of Property Act, 1882 provides that the transfer by an unauthorized person, who subsequently acquires the interest, is a good transfer. The last argument of the learned counsel is also bound to fail because as per the provisions of the Dholidar (Vesting of Proprietary Rights) Act, 2010 the ownership was conferred on the Bhondedar.

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

11. Hence, dismissed accordingly.

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

23.11.2023

(ANIL KSHETARPAL)
JUDGE

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No