

2024:PHHC:044372

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

RSA-2222-1992 (O&M)
Date of decision: 01.04.2024

Mehanga Singh

....Appellant

Versus

Gurdev Singh (since deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.J.S.Bedi, Advocate for the appellant

Mr.C.M.Munjal, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. This is the plaintiff's Regular Second Appeal against the judgment passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Sh.Gurdev Singh was owner of the land. On 04.04.1985 he entered into an agreement to sell in favour of the plaintiff (Mehanga Singh) on receipt of Rs.25,000/- as earnest money out of the total sale consideration of Rs.44,250/-. Subsequently, another amount of Rs.2,000/- was paid on 30.09.1987. The plaintiff, after serving notice upon defendant no.1, on 27.01.1988, filed the suit on 16.03.1988, for possession by way of the specific performance of the agreement to sell. The defendant admitted the execution of the agreement to sell but submitted that the agreement to sell was cancelled and the entire amount

alongwith interest was repaid. The trial court decreed the suit, however, the First Appellate Court held that the agreement to sell has been cancelled by document Ex.D1 dated 13.01.1988. The correctness of such finding by the First Appellate Court is challenged in this appeal.

4. Learned counsel representing the appellant, while referring to the findings of the trial court, submits that the First Appellate Court has erred in reversing the judgment and decree passed by the trial court. He submits that receipt Ex.D1 is on a small piece of paper and the thumb impression of Sh.Mehanga Singh is from direction top to bottom whereas in the normal way, it should be from bottom to top. He further submits that the aforesaid piece of paper has not been scribed by a regular scribe and it appears to have been torn from a bigger piece of paper.

5. This Court has considered the submissions made by the learned counsel representing the parties and perused Ex.D1. The execution of the receipt Ex.D1 has been proved by examining DW3 Sukhdev Singh scribe, DW2 Ujjagar Singh marginal witness and DW5 Sh.V.B.Bhatnagar handwriting and finger print expert. It has come on record that the plaintiff appended his thumb impression. It was for him to explain as to how and in what circumstances, he appended his thumb impression. Even if the thumb impression is with direction from top to bottom that would not make any difference because the plaintiff is required to explain why he appended the thumb impression.

6. The trial court has tried to pick holes in document Ex.D1 without realizing that the aforesaid receipt was executed in the village

between two villagers. In the receipt, it has been recited that the plaintiff admits receipt of Rs.33,000/- and declared that the agreement to sell dated 04.04.1985 will not be enforceable. It has also come on record that the land was previously mortgaged with children of Sh.Mehnga Singh. Moreover, the suit was filed nearly three years after the agreement to sell was entered into.

7. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere with the findings of fact arrived at by the First Appellate Court.

8. Hence, dismissed.

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

01.04.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE