

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3309 of 2023 (O&M)

Reserved On: 09.01.2024

Date of Order: 18.01.2024

Balwan Singh

.Appellant

Versus

Bhim Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Pal, Advocate and
Mr. Madhur Panwar, Advocate
for the appellant.

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of relief of specific performance of the agreement to sell dated 19.07.2012.

2. On appreciation of evidence, both the courts have come to the following conclusions:-

- (1) Though the plaintiff claims that he has paid Rs.72,00,000/- out of total sale consideration of Rs.77,00,000/-, however, the plaintiff has failed to prove his capacity to pay the huge amount. The plaintiff claims that he has borrowed a sum of Rs.42,00,000/- from his three friends. However, there is no documentation that shows the transaction that happened between the plaintiff and his three friends. Furthermore, the plaintiff is residing in a tenanted accommodation and he is not an income tax payee. He claims to be a broker dealing with the

property. However, it is admitted by him that he does not know the two other signatories, who had attested the agreement to sell.

- (2) There is a vast variation between the deposition of plaintiff and Mr. K.V.Ramesh, the only marginal witness examined by the plaintiff. Mr.K.V.Ramesh, the marginal witness admits that no talks and transactions of the sale and purchase took place in his presence.
 - (3) The plaintiff has also failed to prove that the defendant was owner of the property agreed to be sold. It has been stated that there is a reference to land comprised in khasra no. 17/1/2 which is not reflected against the defendants' name.
 - (4) Both the courts have found that the agreement to sell is subscribed on a pre-printed format in which only the blank spaces have been filled. The first page of the document Ex.P4 does not bear the signature of the plaintiff, whereas on the back side the signature of defendant is missing.
3. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.
 4. The learned counsel representing the appellant contends that the discrepancy in the evidence of PW1 and PW2 is minor and insignificant and therefore, the court has erred in dismissing the case. He further submits that the court has wrongly recorded a finding that the agreement to sell is a suspicious document.
 5. This court has considered the submissions of the learned counsel representing the appellant and has carefully gone through the

evidence of PW1 and PW2 which has been produced by the learned counsel representing the appellant at the time of hearing.

6. It is evident that Mr. K.V.Ramesh, the attesting witness of receipt Ex.P2 says that no talks and transactions took place in his presence. He also submitted that they collected the proforma from Sh. Parveen Kumar, who did not accompany them while the agreement to sell was signed. He conceded that they did not make any inquiry about the right and title of the defendant. He conceded that he never went to the shop of the deed writer who typed Ex.P4. As per the statement of PW2, the agreement to sell Ex.P4 was executed in the tehsil compound, however, it was not scribed by a regular deed writer and it does not bear the stamp and signature of the scribe. Moreover, both the courts on appreciation have found that the agreement to sell is a suspicious document.

7. With reference to the second argument of the learned counsel representing the appellant, it may be noted that learned counsel representing the appellant failed to draw the attention of the court to any substantive error in appreciation of the evidence by the courts below. He also failed to draw the attention of the court to any perversity in the impugned judgments.

8. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

9. Dismissed accordingly.

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

18th January, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO