



RSA-2287-2012 (O&M)

Main case

1 LRs of defendant are in second appeal aggrieved of judgment and decree passed by the Courts below whereby suit filed by the plaintiff seeking specific performance of agreement to sell dated 07.02.2003 has been decreed by both the Courts. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendant and respondent No.1 as plaintiff.

2 Plaintiff based his suit upon agreement to sell dated 07.02.2003 claiming that defendant agreed to sell 19 marlas of land in his favour for a valuable sale consideration of Rs.50,000/-. At the time of execution of the agreement to sell whole of the earnest money was paid and the possession was delivered. It was also agreed between the parties that the sale deed shall be executed by the defendant-vendor as and when the plaintiff shall wish the defendant to execute the same. Plaintiff claims that on the asking of the plaintiff, defendant failed to execute the sale deed even though the plaintiff remained present on 01.07.2005 along with Stamp and registration charges.

3 Suit was contested by the defendant who denied execution of the agreement to sell and claimed that the agreement to sell is an act of fraud and impersonation and the same was got executed by a person who misrepresented himself to be vendor Bharta S/o Mohar Singh.

4 Plaintiff in order to prove agreement to sell examined stamp vendor PW6, scribe PW4 and 3 attesting witnesses PW1, PW5 & PW 8. On the contrary defendant apart from examining himself claiming fraud examined hand writing expert as DW-1. While returning findings on issue No.1, the Court of the first instance found that the plaintiff duly proved



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execution of agreement to sell in terms of Section 68 of the Evidence Act, 1872 by examining attesting witnesses, stamp vendor and scribe. The only evidence brought on record by the defendant in the shape of report of hand writing expert cannot be relied upon as the hand writing expert has already been disbelieved in earlier lis. Trial Court decreed the suit filed by the plaintiff. The aforesaid findings have been sustained by the lower Appellate Court.

5 Mr. Khurana, Advocate for the defendant while assailing the findings recorded by the Courts below submitted that the report of the hand writing expert has been wrongly disbelieved. From the reading of the report, it is evident that the thumb impression on the agreement to sell did not match with the admitted thumb impression of the defendant. The Courts below thus, ought not have disbelieved the report. He thus submits that the Courts below having returned perverse findings, the impugned judgment and decree passed by the Courts below deserve to be set aside. He further submits that the fact that the plaintiff moved an application seeking specimen signatures of the plaintiff and thereafter opted not to examine hand writing expert shows that even their handwriting expert opined that the thumb impressions do not match which forced them not to examine the hand writing expert.

6 *Per contra*, Mr. Sanjay Mittal, Advocate for the plaintiff submits that the falsity of the defence taken by the defendant is evident from the fact that as per the recitals of the agreement to sell propounded by the plaintiff, possession was handed over at the time of execution of agreement to sell to the plaintiff. The said fact has been admitted by the defendant



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while appearing as DW2. He thus submits that in view of the aforesaid fact, agreement to sell stands proved and thus, no exception can be taken to the findings recorded by the Courts below.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 As per the facts, the plaintiff claims to have paid whole of the earnest money at the time of execution to sell and further asserts that possession was delivered to him. Thus issue of readiness and willingness is not substantive. The defendant claims to have never executed agreement to sell. It has been further claimed that the same is result of misrepresentation and fraud played upon him. In order to decide the issue it will be apt to peruse the pleadings of the parties. Para 2 of the plaint reads as under :-

“ 2. That the defendant entered into an agreement for sale of the above mentioned land measuring 19 Marlas in favour of the plaintiff for a sale consideration of Rs.50,000/- and received the full sale consideration and executed an agreement dated 7.2.2003 and the defendant agreed to execute and register the sale deed in favour of the plaintiff whenever the plaintiff asked the defendant for the sale. Possession in Killa No.12, Rect. No.17 was delivered to the plaintiff.”

9 The same was responded to by the defendant asserting as under :-

“2. यह कि ज़िम्न नं० 2 अर्जी दावा जिस तरह से तहरीर किया गया है गलत है तसलीम ना है। मिन मुदायला ने कोई मुहायदा बय बहक मुदई ना किया है ना ही कोई इकरारनामा पर मैने कोई दस्तक या अंगूठे किए है और ना ही मैने कोई पैसा वसूल पाया है। इकरारनामा दिनांकित



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7-2-2003 गलत है और उसको मिन मुदायला मनने का पाबन्ध ना है।
क्योंकि एग्रीमेन्ट पर मेरे दस्तक ना है और ना ही मैने कोई पैसे वसूल पाए
हैं। मुदर्ई ने कोई फर्जी आदमी खड़ा करके उसके अंगूठे कराए है, जो
गलत व फर्जी है इसलिए मैं इस इकरारनामों का पाबन्ध ना हूँ।

2. That para No.2 of the plaint is wrong. The same is denied. Defendant never executed any Agreement to Sell in favour of the plaintiff. Defendant never affixed any signature or thumb impression on the Agreement. No amount was received. The Agreement dated 7.2.2003 is a forged document. The same is not binding on the defendant as he never signed the same. The plaintiff presented a fake person whose thumb impression was affixed misrepresenting as defendant.

10 Even though defendant denies execution of agreement to sell but there is no denial with respect to handing over of the possession. The aforesaid fact was candidly admitted by the defendant when he entered into witness box. However, on his own he tried to explain the possession claiming that the plaintiff is in possession as a tenant on payment of *Batai*. The said statement made by defendant is beyond pleadings. Apart from that, once defendant admitted possession of the plaintiff, onus shifted upon him to prove as to how plaintiff came into possession of the suit land. No cogent evidence was led apart from the bald statement beyond pleadings.

11 Apart from the aforesaid fact, the plaintiff successfully proved execution of the agreement to sell by examining the stamp vendor, scribe and the attesting witnesses. The Courts below rightly returned finding of fact regarding execution of agreement to sell in favour of the plaintiff.



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These are pure findings of fact and are beyond the scope of second appeal in the absence of any question of law raised.

12 Finding no merits in the present appeal, the same is ordered to be dismissed.

13 Pending miscellaneous applications, if any, also stand disposed off.

04.03.2025

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No