



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

1. RSA-664-2014 (O&M)
Date of decision: 22.04.2025

JITO DEVI AND ORS.

..Appellants

Versus

YASHPAL SINGH

..Respondent

2. RSA-665-2014 (O&M)

JITO DEVI

..Appellant

Versus

YASHPAL SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dhruv Mittal, Advocate
for the appellant.

Mr. Naveen Batra, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

I. **Brief facts:-**

1. With the consent of learned counsel for the parties, two connected regular second appeals shall stand disposed of by this common order.

2. Sh. Chuhru was in possession of land belonging to the government. He was recorded in possession of the property as 'gair marusi' in the revenue record. There was an allotment in his favour but litigation in the High Court was pending. He on 21.07.2004 executed an agreement to sell in favour of the plaintiff (respondent) on receipt of Rs.50,000/- as earnest money out of total sale consideration of Rs.2,20,000/-. The



agreement to sell was executed with respect to 32 kanals land. It was recited in the agreement to sell that the sale deed would be executed within one year and if the pending litigation is not decided, Sh. Chuhru would transfer his 'gair marusi' rights in favour of the plaintiff. On 21.07.2005, a supplementary agreement to sell was executed acknowledging the agreement to sell dated 21.07.2004. It was recited that the litigation is still pending and the sale deed would be executed and registered within two months from the date the litigation is decided in favour of Sh. Chuhru and he gives notice to the plaintiff with respect to the decision. Subsequently, Sh. Chuhru died. The plaintiff sent notice to the defendant on 10.12.2007 but defendants failed to respond, hence, the suit for specific performance of agreement to sell was filed. It was claimed that plaintiff is clever as his grand-father was Sarpanch of village Gohlani and the agreement to sell was prepared to grab the property. Both the Courts have accordingly held that the execution of agreement to sell and supplementary agreement dated 21.07.2005 have been proved on payment of earnest money of Rs.50,000/-, however, the trial Court ordered refund of Rs.1,00,000/- instead of relief of specific performance, which has been reversed by the First Appellate Court on the ground that the defendants have not made any averment with regard to hardships, that they would suffer.

II. Arguments:-

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with photocopy of the agreement to sell and supplementary agreement.



4. Learned counsel for the appellant contends that there was no purpose recited in the agreement to sell for selling 32 kanals land. While referring to the statements of marginal witnesses, he submits that they were not known to Sh. Chuhru and there was no denial of Sarpanch, who identified Sh. Chuhru at the time of execution of the agreement to sell.

III. Analysis and Discussion:-

5. This Court has considered the submissions of learned counsel for the parties.

6. It is evident that the defendants have not led any evidence to prove that Sh. Chuhru did not append his thumb impression on the agreement to sell or supplementary agreement to sell, which is scribed on a non-judicial stamp paper of Rs.300/- (three papers of Rs.100/- each). Sh. Chuhru has thumb marked each page of the agreement to sell. The supplementary agreement to sell has been scribed after a period of one year from the original agreement to sell. On the reverse side of page 3, it is again thumb marked by Sh. Chuhru. The defendants have denied execution of the agreement to sell. They have not made any averment with regard to the hardship. Once the execution of the agreement to sell has been proved on payment of earnest money. The denial of relief of specific performance can only be for valid reasons. In the agreement to sell, the seller is not required to recite the purpose for selling property. Moreover, there is no requirement of attestation of the agreement to sell by two witnesses. There is also no requirement that the marginal witnesses should be known to the proposed vendors. Once, defendants have not led any evidence to prove that their predecessor Sh. Chuhru never thumb marked the agreement to sell on



01.07.2004 and supplementary agreement to sell dated 21.07.2007, they have failed to prove their defence.

7. Furthermore, in the year 2004, the litigation filed by Sh. Chuhru was pending, which was the reason for execution of the supplementary agreement. Moreover, the First Appellate Court has recorded a finding of fact, which is not proved to be erroneous.

IV. Decision:-

8. Hence, no ground to interfere is made out.

9. Dismissed.

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

April 22nd, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*