

**(2010) 10 P&H CK 0287**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2230 of 2007 (O and M)

Surinder Pal Singh

APPELLANT

Vs

Harpreet Singh and Another

RESPONDENT

**Date of Decision:** Oct. 25, 2010

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Rakesh Kumar Jain, J.

The Defendant No. 1 is in second appeal against the judgment and decree of the Courts below by which suit filed by the Plaintiff for specific performance of the agreement to sell has been decreed.

2. In brief, Defendant No. 1/Appellant entered into an agreement to sell dated 11.2.2001 with the Plaintiff to sell the house in dispute for a sum of Rs. 4 lacs after receiving earnest money of Rs. 2,35,000/- and agreed to execute the sale deed on or before 10.7.2001. However, on 9.7.2001, with the mutual consent, Defendant No. 1 and the Plaintiff extended the date of execution of sale deed from 10.7.2001 to 8.10.2002, but when the Defendant/Appellant did not come forward for the purpose of execution and registration of the sale deed, the Plaintiff had to file the suit. It is alleged that the Plaintiff had filed another civil suit on 08.4.2002 when it came to his notice that Defendant No. 1 had started negotiating with Defendant No. 2. for the purpose of sale of the house in dispute. In the said suit, the Civil Court had directed the parties to maintain status-quo regarding alienation on 15.4.2002 and the said order was made absolute on 09.5.2002. The Defendant No. 2. was proceeded against ex-parte on 20.3.2003 and the suit was contested by Defendant No. 1 in which he totally denied the execution of agreement of sale and the receipt of earnest money. It was alleged that agreement to sell is an act of fraud as Defendant No. 1 had business relations with the Plaintiff who used to raise loan from him and in that process, he used to give him signed blank papers as security for the loan,

which he allegedly converted into the agreement to sell. He further alleged that he had taken Rs. One lac. as loan from the Plaintiff on 11.1.2001 which is already repaid on 09.7.2001, therefore, there was no contract subsisting between the parties much-less the alleged agreement to sell which is being enforced by the Plaintiff by way of the present suit. The Plaintiff filed the replication to the written statement of Defendant No. 1. and on the pleadings of the parties, issues were framed on 02.4.2003. The Plaintiff examined Pawan Kumar Deed Writer as PW-1; Daljitram Singh an attesting witness of the agreement to sell and endorsement as PW-2; and himself entered into the witness box as PW-3. Defendant examined himself as DW-1; Gurmit Singh as DW-2; Sukhbir Kaur as DW-3 and Rajan Architect as DW-4. However, there was no evidence in rebuttal led by the parties.

3. Both the Courts below recorded a concurrent finding of fact about the execution of agreement to sell and the absence of any fraud as alleged by Defendant No. 1. In this regard, findings recorded in para Nos. 22 and 24 of the learned first Appellate Court are relevant to be mentioned here which are reproduced below:

Appellant as DW-1, indubitably denied execution of agreement of sale Ex.P1 and endorsement Ex.P2 but he admitted his signatures, thereon, so, in these circumstances, onus heavily shifted upon him to prove that he appended his signatures, thereon, when these were blank. Appellant is an educated man. It was, thus, not required of him to sign a blank paper. If he had appended his signature on blank paper and later blank paper was converted into agreement of sale Ex.P-1 and endorsement Ex.P-2, it was required of him to report the matter to the police for taking action against Respondent No. 1. or to file private complaint for summoning of the Respondent No. 1. as accused for forging the agreement of sale Ex.P-1 and endorsement Ex.P-2. The Appellant remained complacent and tacit on this matter, whereon, he should have acted with alacrity. His tacitness and complacency must lead to inevitable conclusion that he had conceded the genuineness and correctness of agreement Ex.P-1 and endorsement Ex.P-2 and did not take up the matter to the police or before the Ilaqa Magistrate for taking action against Respondent No. 1. for forging and fabricating the blank paper bearing his signature, into agreement of sale Ex.P-1 and endorsement Ex.P-2. Attesting witnesses of the agreement of sale Ex.P-1 and endorsement Ex.P-2 and PW-1 Pawan Kumar Deed Writer are not alleged to have any animus or hostility against the Appellant, and, as such, no motive can be ascribed to them to join the Respondent No. 1 to fabricate and forge the agreement of sale Ex.P-1 and endorsement Ex.P-2. Even DW-1 Appellant himself admitted that he is not having any animus or hostility against Jaswant Kaur and Daljitam Singh and Pawan Kumar, Deed Writer.

It is the case of the Appellant that he had reimbursed Rs. One lac to the Respondent No. 1. Strange enough, no receipt was obtained by him from the Respondent No. 1. In absence or such receipt, the oral evidence of appellate as DW-1 must be repelled, as he being an interested witness could not be expected to testify

repugnant to his plea taken in the written statement. Evidence of DW-1 and DW-2 is also in consequential to the Appellant as no receipt has been placed on the record to prove the alleged reimbursement of Rs. One lac. by the Appellant to Respondent No. 1. All the Dws have failed to explain as to why they remained silent on the matter of obtaining receipt and realization of Rs. One lac by the Appellant from Respondent No. 1. and as to why the matter was not taken to the police, in this regard. So, this defence seems to be an after thought and was rightly repelled by the learned trial Court.

3. Aggrieved against the judgment and decree of the Courts below, Defendant No. 1. has come up in second appeal before this Court in which the only argument raised is that endorsement for the extension of time in the agreement to sell is signed only by the scribe and not by the parties, therefore, that cannot be taken into consideration.

4. On the other hand, learned Counsel for the Appellant has submitted that it is a case of total denial of the execution of agreement to sell by Defendant No. 1/Appellant, therefore, his allegation that the corrections have been signed by the scribe and not by the parties at the time of extension of time for the purpose of execution and registration of sale deed, is of no consequence. Moreover, it is admitted by learned Counsel for the Appellant that this plea was not raised by him before the Courts below, therefore, the said plea cannot be taken for the first time in the Regular Second Appeal.

5. I have heard learned Counsel for both the parties and perused the record with their assistance.

6. In case, where the Defendant has denied execution of the agreement to sell in toto, which has otherwise been proved before the Courts below on the basis of evidence led by the parties, the only argument raised by the learned Counsel for the Appellant that there are some cuttings in the extension of time, which is signed only by the scribe and not by the parties, is wholly inconsequential because the Plaintiff has denied the very basis of the dispute, namely agreement to sell on the ground that it is an act of fraud and forgery which he has miserably failed to prove before the Courts below.

7. In view of the above discussion, I do not find any merit in the present appeal and the same is hereby dismissed. No costs.