



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 2435 OF 2018
(@SLP (C) NO(S).34464 OF 2016)**

DALIP SINGH Appellant(s)

Versus

BHUPINDER KAUR ... Respondent(s)

J U D G M E N T

Deepak Gupta J.

1. Leave granted.
2. This appeal is directed against the judgment dated 05.08.2016 in Regular Second Appeal No.1442 of 2010 passed by the High Court of Punjab & Haryana at Chandigarh whereby concurrent findings of fact of the trial court and the lower appellate court have been set aside.

3. Briefly stated the facts of the case are that Bhupinder Kaur (respondent-plaintiff) filed a suit for specific performance of agreement to sell dated 25.02.1999, whereby Dalip Singh (appellant-defendant) had allegedly agreed to sell the suit property to her for a consideration of Rs.1,50,000/- out of which Rs.92,000/- was paid at the time of the agreement.

4. The trial court dismissed the suit holding that there were many suspicious circumstances surrounding the agreement. Though the trial court did not totally believe the case set up by Dalip Singh that he had not even signed the agreement, it held that the plaintiff Bhupinder Kaur had failed to prove her own case. After discussing the evidence threadbare, the trial court held that the plaintiff had failed to prove that an amount of Rs.92,000/- was paid to the defendant. The court referred to the statement of the plaintiff in which she had stated that she had withdrawn this amount of Rs.92,000/- from the Oriental Bank of Commerce. She did not produce the passbook of the Bank to prove this allegation. In fact, the defendant examined a witness from this Bank,

who proved that from 01.02.1999 to 01.03.1999 there was no transaction in the account by the plaintiff. Thus, the plaintiff had miserably failed to prove that she had paid a huge amount of Rs.92,000/- to the defendant. The trial court also came to the conclusion on the basis of the evidence that the agreement was for consideration of Rs.1,50,000/- but the value of the property at the relevant time was not less than Rs.5,00,000/-.

5. The lower appellate court, after discussing the entire evidence, upheld the decree of the trial court. It also found that the defendant is an illiterate person and even if his signatures on the agreement were accepted to be there, nobody had led evidence to show that the document was read out and explained to him before he signed the same. It would also be pertinent to mention that within four days of the agreement being signed, the defendant had issued notice on 01.03.1999 clearly stating that he had not entered into any agreement to sell nor he had received Rs.92,000/-. Therefore, this was not an afterthought.

6. Surprisingly, the High Court, in second appeal, upset these findings of facts without even discussing the evidence and merely after referring to certain averments of Para 2 of the plaint and paragraph 2 of the written statement, which read as follows:

“Para No.2 of the plaint

That at the time of execution of the agreement to sell dated 25.02.1999 the defendant received a sum of Rs. 92,000/- from the plaintiff as earnest money in advance and agreed to execute the sale deed in favour of the plaintiff on or before 16.07.1999.

Paragraph 2 of the written statement on merits

“Para No.2 of the plaint is wrong and denied. The defdt. Never received Rs. 92,000/- from the plaintiff as earnest money on 25.02.99 nor the plaintiff ever paid this amount to the defdt. It is denied that the sale deed was to be executed on or before 16.7.99.”

The High Court held that on the basis of the aforesaid pleadings, the irresistible conclusion is that the agreement to sell was actually executed and readiness and willingness has been proved.

7. We fail to understand how the High Court could come to this conclusion. In the written statement the defendant had denied the averments made in Para 2 of the plaint. The defendant had denied that he had received Rs.92,000/- as earnest money. There was no admission by him of any of the allegations. The reasoning given by the High Court is specious and cannot stand scrutiny. The High Court did not discuss the evidence at all and erred in setting aside the concurrent findings of both the Courts.

8. In view of the above discussion, we allow the appeal, set aside the judgment of the High Court and restore the decree of the trial court.

9. Pending applications, if any, shall also stand disposed of.

.....**J.**
(Madan B. Lokur)

.....**J.**
(Deepak Gupta)

New Delhi
February 23, 2018