

**220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.473 of 2013 (O&M)
Date of Decision: August 31, 2015**

Lal Chand

.... Appellant

vs.

Naib Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. U.K. Agnihotri, Advocate for the respondent.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 27.08.2012 passed by learned Addl. District Judge, Panchkula, affirming the judgment and decree dated 18.09.2010 passed by learned Civil Judge (Sr. Divn.), Panchkula, vide which the suit of the plaintiff for specific performance of the agreement to sell dated 26.07.2000, was dismissed with costs.

Brief facts relevant for the purpose of disposal of the present appeal is that according to the plaintiff, the defendant executed an agreement to sell dated 26.07.2000 for sale of suit land to the plaintiff for total sale consideration of ₹2,00,000/-. ₹50,000/- were paid as earnest money. The date of the execution of the sale

deed was fixed on 30.06.2001, which happened to be a holiday. Therefore, the defendant was orally requested by the plaintiff to come present on the next working day i.e. 02.07.2001 in the office of Sub Registrar, Raipur Rani for registration. However, the defendant did not turn up and the plaintiff got his presence marked before the Sub Registrar, Raipur Rani. The plaintiff thereafter issued a legal notice on 10.09.2001 calling upon the defendant to come present on 20.09.2001 to execute the sale deed. However, on that day also, the defendant did not turn up. Therefore, the plaintiff filed the present suit for specific performance on 16.07.2004.

The defendant in the written statement had pleaded that he had executed the mortgage deed in favour of the plaintiff for ₹1,20,000/- on the alleged date of agreement. He further pleaded that on 24.07.2003, a compromise was executed between the parties vide which the alienation of 16 marlas of the suit property in favour of the plaintiff in lieu of which plaintiff agreed to redeem the remaining portion of the suit property in favour of defendant. The agreement to sell was denied.

From the pleadings, following issues were framed:

- “1. Whether the plaintiff is entitled for possession of the suit property by way of specific performance of the agreement to sell dated 26.7.2000? OPP*
- 2. Whether the suit is not maintainable in the present form nor the plaintiff has locus standi to file the same? OPD.*
- 3. Relief.”*

The Lower Court came to the conclusion that PW3 Rakesh son of the plaintiff, who had appeared as Special Attorney Holder of the plaintiff, had admitted the mortgage deed mark D1. He also admitted the photograph at point mark D3. He also admitted that the defendant had mortgaged half of the suit property in his favour and other half share was mortgaged in favour of other family members of the defendant. The mortgage deed was executed on 26.07.2000, which was exactly the same date on which the agreement to sell is stated to have been executed. At the time of mortgage deed ₹1,20,000/- were paid to the defendant. Rakesh also admitted that Harminder Nath, Document Writer had scribed the same. The mortgage deed was duly registered.

Even Rakesh witness of the agreement produced by the plaintiff also admitted said mortgage deed and also admitted that he had also signed the mortgage deed. The Lower Court found that on the same day two documents alleged to have been executed, one mortgage deed for an amount of ₹1,20,000/- and other is the agreement to sell for an amount of ₹2,00,000/-. Out of which ₹50,000/- are stated to have been paid. In this way, but for the small portion of the sale consideration, the entire amount was paid. The Lower Court is of the view that it does not sound good to reasoning why defendant would firstly mortgage his land and then agree to sell the same to the plaintiff on the same day. Therefore, the agreement to sell was disbelieved. The findings were affirmed by the Appellate Court.

I am of the view that these are the findings of facts and there is no illegality or perversity in the same. No question of law much less substantial question of law arises in the present appeal.

Accordingly, the present regular second appeal deserves to be dismissed. Moreover, the suit was filed after the expiry of three years of the alleged date of the execution of the sale deed, therefore, the suit was also time barred. Though this plea was never raised by the defendant in the written statement and it also escaped from the facts of both the courts below. However, it being the legal point, can be raised at any point.

The present regular second appeal is dismissed accordingly.

August 31, 2015
sarita

(KULDIP SINGH)
JUDGE