

**133 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHADIGARH**

RSA-3457-2015

Date of decision-05.11.2015

MANJIT SINGH & ANR

...Appellants

VS

RAGHBIR SINGH

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:-None

RAJ MOHAN SINGH, J (Oral)

[1] Even on fourth pass over none has turned up to address arguments.

[2] Plaintiffs are in second appeal in a suit for specific performance. Agreement to sell is shown to have been executed on 15.07.2009 in respect of suit land. Raghbir Singh was owner of 10 kanals of land. He agreed to sell the same in favour of plaintiffs at the rate of Rs. 7,25,000/- per acre. Target date for execution of sale deed was fixed as 24.08.2009. As per version of plaintiffs, the defendant also received the amount of Rs. 5,50,000/- as earnest money at the time of execution of agreement to sell dated 15.07.2009. Plaintiffs remained present in the Office of Sub-Registrar along with balance sale consideration, but the defendant did not turn up to execute the sale deed and to perform his part of obligation.

[3] The suit has been contested by the defendant on all customary pleas. The factum of agreement to sell has been denied, neither the defendant has ever consented to such agreement, nor he has received any consideration. The parties were put to trial on the following issues:-

1. Whether the defendant executed an agreement to sell dated 15.07.2009 in favour of plaintiff? OPP
2. Whether the plaintiff is still ready and willing to perform his part of the contract? OPP
3. Whether the agreement to sell is forged and fabricated document? OPD
4. Whether the present suit is bad for non-joinder and mis joinder of necessary parties? OPD
5. Relief.

[4] Both the parties were allowed to lead evidence, but plaintiff failed to adduce any oral as well as documentary evidence and his evidence was closed by order. On the other hand, defendant in his evidence produced only documentary evidence. Trial Court dealt issues No.1 and 2 collectively and recorded the finding of fact that the plaintiffs have not led any evidence, oral or documentary. No single witness has been examined in order to prove execution of agreement to sell, nor any documentary evidence has been filed or exhibited on record. The pleadings of the plaintiffs remained confined only to the allegations in the plaint.

[5] Trial Court dismissed the suit for want of evidence primarily on the basis of findings recorded under issues No.1 and 2. Issues No.3 and 4 were not pressed by the defendant. Before the Lower Appellate Court, the appellant prayed that the case be remanded to the trial Court so that they may lead evidence. Even the original agreement to sell has not been placed on record, nor any witness has been examined in the context of proving payment of earnest money as well as payment of additional earnest amount to the tune of Rs. 5,50,000/-. The plaintiffs have not

disclosed the source of said amount with reference to any withdrawal from the Bank or borrowing the same from any person. It is a case of no evidence at all. No question of law could be appreciated for want of any evidence viz oral or documentary on record to prove the case of the plaintiff by no stretch of imagination. There is no material on record on which any preponderance of probability could be appreciated. The questions as formulated by the appellants in the grounds of appeal do not arise at all. The plaintiff-appellants had appropriate and reasonable opportunities to lead evidence. Having failed to do the same, they cannot turn around and claim that the case be remanded back to the trial Court, facilitating them to adduce evidence. No ingredients of remand are attracted to the facts of the present case. Consequently, this appeal is found to be bereft of merit and the same is accordingly dismissed.

November 05, 2015

vanita

**(RAJ MOHAN SINGH)
JUDGE**