

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.3687 of 2015 (O&M)

Date of decision: 13.10.2015

Gurcharan Singh

... Appellant

Vs.

Sucha Singh (since deceased) through LRs &
another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ashu Kaushik, Advocate, for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant No.1, is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for specific performance of the agreement to sell dated 09.02.2005, has been decreed and LRs of respondent-plaintiff have been held entitled to execution and registration of the sale deed and defendant No.2-Bank has been held to have first charge over the suit property till the loan amount along with interest accrued thereon is repaid.

Mr. Ashu Kaushik, learned counsel appearing on behalf of appellant/defendant No.1 submits, that execution of the agreement to sell has been specifically denied as loan amount could not be paid

for the reason that property agreed to sell was mortgaged with defendant/respondent No.2- Bank. Since there was default in the repayment of loan amount, thus, Bank had instituted the suit, therefore, discretion of power under Section 20 of the Specific Relief Act, could not have been exercised in favour of LR's of the respondent-plaintiff. He further submits that the aforementioned facts have not been noticed by the Courts below, therefore, there is illegality and perversity in the findings.

I have heard learned counsel for appellant/defendant No.1 and appraised the impugned judgments and decrees of the Courts below.

The execution of the agreement to sell has been proved through testimony of the attesting witnesses. Appellant-defendant No.1 has failed to lead evidence to show that thumb impressions/signatures were not his. There is no embargo for entering into agreement to sell, even if the property is mortgaged with the Bank as mortgage would continue, if the property exchange hands. The readiness and willingness to perform their part of the contract has been proved by examining PW2, attesting witness through Ex.P4. The aforementioned affidavit has been proved to show that on target date 12.12.2005, the plaintiff was present along with witnesses, but appellant/defendant No.1 failed to perform his part of contract.

I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination. Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 13, 2015
savita