

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

112

**RSA-5064-2015 (O&M)
Date of Decision-19.10.2015**

KAMLESH

Appellant

Versus

SHAMSHER SINGH AND ANR.

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Virk, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Defendant is in second appeal in a suit for possession by way of specific performance of agreement to sell dated 20.02.2007. The agreement to sell was executed in respect of 3.33 marlas (100 square yards) for a total sale consideration of Rs.2,35,000/-. An earnest amount to the tune of Rs.1 lac was alleged to have been paid at the time of execution of agreement to sell. Target date was fixed as 20.05.2007.

[2]. Plaintiff further alleged that the date of execution of sale deed was further extended to 25.08.2008 on receipt of additional earnest amount to the tune of Rs.27,000/-. Only an amount of Rs.1,08,000/- was remaining and that was to be paid at the time of execution of sale deed. The defendant executed a registered gift deed dated 05.12.2007 and that prompted the plaintiff to file suit in question on 02.02.2008 even before the target date. Gift deed has also been challenged in the suit.

[3]. In the written statement filed by the defendant only factum of that gift deed has been mentioned without mentioning any liability in terms of maintenance or otherwise arising out of litigation *inter se* between vendor and his wife. The evidence has been led without there being any foundation in the written statement highlighting pending litigation between husband (vendor) and his wife and gift deed was claimed to be the result of existing liability towards husband on account of maintenance.

[4]. Both the Courts below have taken note of the fact that there is no foundation made by the defendant in terms of pleadings and the evidence led beyond pleadings is of no consequence. Even otherwise, execution of agreement to sell is proved on record by way of attesting witnesses. Husband was proceeded against ex parte before the trial Court but during the pendency of appeal before Lower Appellate Court he died.

[5]. Both the Courts below have concurrently held that agreement to sell is proved on record. Gift deed executed during pendency of the appeal has no binding effect on the rights of the plaintiff. The vendor-defendant has not set up any plea/defence in the written statement vis-a-vis his liability towards wife for the purposes of executing gift deed dated 05.12.2007.

[6]. After hearing learned counsel for the appellant, no perversity in the impugned judgments and decrees passed by the Courts below could be pointed out so as to interfere in

second appeal. Evidence on record cannot be held to be result of misreading of evidence in any manner.

[7]. In view of aforesaid, no law point worth consideration is made out. Consequently, the appeal is dismissed.

[8]. Since the appeal is being dismissed on merits, no order is required to be passed in the application i.e. CM No.12105-C of 2015 for permission to file the accompanying appeal as indigent person.

19.10.2015

Prince

(RAJ MOHAN SINGH)
JUDGE