

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2797-1984

Date of decision : 30.03.2016

Gurdip Kaur

... Appellant

Versus

Mohinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K. S. Dadwal, Advocate
for the appellant.

Mr. R. K. Arya, Advocate
for respondent No.1.

AMIT RAWAL, J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the learned lower appellate Court whereby suit for possession by way of specific performance of agreement to sell dated 11.07.1978 has been set aside in respect of the land measuring 12 kanals 10 marlas for a sum of ₹18,000/- between the appellant-plaintiff and Dharam Singh.

Learned counsel appearing on behalf of the appellant submits that Dharam Singh had entered into agreement to sell in respect of land measuring 18 kanals 10 marlas for a sum of ₹18,000/- in favour of Gurdip Kaur, appellant-plaintiff. The sale deed was to be executed on 03.11.1980. However, Dharam Singh executed a sale deed of the land measuring 8 kanal to Gurdip Kaur and agreement confined to sale deed dated 11.07.1978 was kept alive viz-a-viz 4 kanals 10 marlas during the pendency of the agreement to sell. Dharam Singh had entered into agreement with Mohinder

Singh on 18.03.1979 which was extended first to 19.10.1979 and then 13.02.1980. The lower trial Court on the basis of oral and documentary evidence decreed suit for the reason that Dharam Singh had admitted the execution of agreement to sell. However, learned lower appellate Court has reversed the finding that Ex. D1 is prior in time. It is totally contrary to the facts and circumstances much less against the evidence. He further submits that total sale consideration was ₹18,000/- and paid ₹2000/- as earnest money. While executing the sale deed ₹2000/- was adjusted. The property was mortgaged and after redemption, right accrued to seek specific performance. This Court formulates the following substantial questions of law:-

- “1. Whether the judgment and decree of lower appellate Court suffers from illegality and perversity.*
- 2. Whether the lower appellate Court has failed to address the factual aspect of the matter by misreading the agreement to sell allegedly executed between Dharam Singh and Mohinder Singh which is 18.03.1979 whereas that of the plaintiff is 11.07.1978.”*

Mr. R. K. Arya, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the findings of lower Appellate Court. No prejudice has been caused to the appellant-plaintiff as he has been compensated while granting the double amount of earnest money. The discretionary relief under Section 20 of the Specific Relief Act should not be granted much less no substantial question of law arises for determination of this Court.

I have heard counsel for the parties and appraised the paper books and of the view that the judgment and decree is not sustainable as

there is gross misreading in the agreement of sale having been entered between Dharam Singh and Mohinder Singh which is dated 18.03.1979 whereas the agreement to sell dated 11.07.1978 and therefore, it cannot be said prior in time. The appellant-plaintiff has proved her readiness and willingness as per provision under Section 16(c) of the Specific Relief Act, 1963 and the trial Court rightly exercised its discretion in view of the agreement to sell in view of the admission by Dharam Singh in regard to agreement to sell.

Keeping in view the aforementioned facts and circumstances, the appeal is allowed and the judgment and decree of the learned lower appellate Court is hereby set aside and the questions of law are answered in favour of the appellant-plaintiff. The suit stands decreed in toto.

(AMIT RAWAL)
JUDGE

March 30, 2016.

Davinder Kumar