

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

**RSA No.4928 of 2009 (O&M)
Date of decision:24.08.2016**

Jagir Singh

... Appellant

Vs.

Hans Raj (since deceased) and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Mamli, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court dismissing the suit seeking specific performance of the agreement to sell dated 09.07.1996 on the premise that plaintiff has failed to prove the execution of the agreement to sell, much less, signatures of the vendor, in the absence of handwriting expert.

Mr. R.S.Mamli, learned counsel appearing on behalf of the appellant-plaintiff submits that the Court below has misread the cross examination of PW5 - Des Singh, attesting witness of the agreement, who admitted the appended signatures and money was exchanged in his presence. He further submits that though the possession had already been given in pursuant to agreement to sell dated 08.08.1991. The appellant had paid ₹15,000/- and ₹10,000/- as per the subsequent agreement dated 09.07.1996 and the rate was fixed @ ₹27,500/- per acre in respect of the

land measuring 16 kanals 3 marlas. He also submits that the Court below has also reversed the finding on limitation which is not only erroneous but also fallacious as the target date in the agreement to sell was 09.10.1997, whereas, the suit had been registered on 09.10.2000, therefore, the suit was within a period of limitation.

No one has put in appearance on behalf of the respondents and they had been proceeded ex parte, vide order dated 29.03.2016.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that following substantial questions of law arise for adjudication of the present appeal which read thus:-

- “1. Whether the suit seeking specific performance of the agreement to sell was within a period of limitation?*
- 2. Whether the agreement to sell dated 09.07.1996 has been proved or not?”*

The answer of the aforementioned substantial questions is in positive on the premise that the Lower Appellate Court has only read few lines of cross examination. It is a settled law that entire examination and cross examination have to be read and not in pith and substances. PW5 - Des Singh, attesting witness submitted that a sum of ₹10,000/- was paid at the time of execution of the agreement to sell dated 09.07.1996 and he appended his thumb impressions. The pith and substance of the cross examination have to be seen which has not been taken into consideration by

the Lower Appellate Court being the last Court of facts and law. As admitted in the cross examination, the plaintiff was already put in possession. The appellant instituted the suit on 09.10.2000, therefore, the question of readiness and willingness would not arise, in view of the plaintiff being in possession. Even otherwise, the suit had been filed as per the original stamp of record dated 06.10.2010, whereas, the target date was 09.10.1997, therefore, the suit is within a period of limitation.

For the foregoing reasons, the judgment and decree of the Lower Appellate Court is hereby set aside and that of trial Court is restored.

Accordingly, the appeal stands allowed.

	(AMIT RAWAL) JUDGE
August 24, 2016	
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No