

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4829 of 2010 (O&M)

Date of Decision: September 21st, 2016

Swarn Singh (since deceased) through L.Rs.

...Appellant

Versus

Karam Singh (since deceased) through L.Rs.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sarabjeet Singh Khaira, Advocate,
for the appellant.

Mr.Aakash Singla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby the suit for specific performance of the agreement to sell dated 27.1.2004, allegedly executed by him in favour of the respondent-plaintiff for sale of land measuring 7 kanals 4 marlas, i.e., land measuring 3 kanals 14 marlas out of Khewat No.2, Khatoni No.8 and Khasra No.9R/8/2/1 (1-4), 13 R/2 (3-16), 14 (7-4) and land measuring 3 kanals 11 marlas out of Khewat No.94, Khatoni No.145 and Khasra No.9R/13/1 (4-4), 12/2 (7-12) situated at Village Dibku for a total sale consideration of ₹2,78,000/- against the earnest money of ₹27,000/-, has been decreed.

Mr.Sarabjeet Singh Khaira, learned counsel for the appellant-defendant submits that the Courts below have committed illegality and perversity in not looking into Ex.D1, the writing dated 24.1.2004, whereby the respondent-plaintiff had agreed to withdraw all his cases pending before

the Civil Court, Pathankot. Having failed to do so, the suit was not maintainable. Ownership of the land though was not denied, but the fact remains that the respondent did not perform his part of the agreement, therefore, the contract had become unexecutable, thus, the discretionary relief under Section 20 of the Specific Relief Act could not have been granted. Appellant has only four acres of land to earn his livelihood. It would be unfair if such a small holding is ordered to be sold to the plaintiff for such a paltry amount. Presence before the Sub Registrar is no ground sufficing the ingredients of Section 16(c) of 1963 Act, therefore, urges this Court for setting-aside of the findings under challenge.

Per contra, Mr.Aakash Singla, learned counsel for the respondent-plaintiff submits that Ex.D1 is the photo copy and has not been proved in accordance with law. Mere exhibition of the document does not dispense with its proof. No particulars of the alleged civil suit, stated to be pending, have seen the light of the day. Nothing prevented the appellant-defendant to prove the same. It is just a lame excuse for avoiding the liability. The factum of agreement to sell is admitted and has been proved through the testimony of the scribe and two attesting witnesses, namely, Basant Singh PW-2 and Raj Pal PW-3. The target date was 27.4.2004 and the suit had been filed on 12.5.2004. The Courts below, after appreciating the oral and documentary evidence, granted the discretionary relief. There is no illegality and perversity. Concurrent findings cannot be interfered with unless and until there is gross illegality and perversity and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the

submission of Mr.Khaira, for, Ex.D1 has not been proved in accordance with law. It is only a photo copy. Any agreement entered between the parties before the police station is not permissible unless and until the same is proved. Neither the order of the previous round of litigation or notice/suit in this regard has been proved. On the contrary, the agreement to sell has been proved through the testimony of the attesting witnesses, aforementioned.

In my view, it is ploy to contest the suit, otherwise the agreement to sell has been proved to the hilt, much less payment of aforementioned amount. Both the Courts below, after appreciating the oral and documentary evidence, have rightly exercised the discretion. No ground for interference is made out, much less no substantial question of law arises for wanting the Court to interfere in the concurrent findings.

Appeal stands dismissed.

September 21st, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No