

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

R.S.A.No.1678 of 2011 (O&M)

Date of Decision: December 08, 2016

Gian Singh

...Appellant

Versus

Charan Kaur & others

...Respondents

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

**Present: Mr.Jatin Salwan, Advocate,
for the appellant.
Mr.H.S.Bajwa, Advocate,
for respondent No.2.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit seeking specific performance of the agreement to sell by claiming joint possession of land measuring 4 kanals being 1/6th share out of 24 kanals 2 marla,s alleged to have been executed by defendant No.1 on 30.6.2002 after receipt of balance sale consideration, has been dismissed.

Mr.Jatin Salwan, learned counsel for the appellant-plaintiff submits that no doubt the attesting witnesses of the agreement to sell have not been examined, but the scribe of the same, i.e., PW-2 Kharaiti Lal has been examined. The categoric stand in the written statement was that the agreement to sell was the outcome of the forgery and fabrication and issue No.7 was framed, but they failed to lead any evidence. However, during the currency of the agreement to sell, the property in dispute, i.e., 1/6th share, has been sold to defendant No.2 Avtar Singh vide sale deed dated 5.8.2002. Even the defendant has not been able to prove the ingredients of Section 41 of the Transfer of Property Act and, thus, cannot be branded as a bonafide purchaser. All these factors have not been taken care of and, thus, there is

gross illegality and perversity in the concurrent findings.

Mr.H.S.Bajwa, learned counsel for respondent No.2-subsequent vendee, submits that he made a reasonable enquiry before buying the property and on inspection of the record, defendant No.1 Charan Kaur was found to be owner to the extent of 1/6th share, which is the sufficient requirement of law. The statement of the scribe would pale into insignificance as the agreement to sell has not been scribed by him. There is no compliance of provisions of Section 68 of the Indian Evidence Act. The concurrent findings cannot be interfered with until and unless there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book, seen the records of the Courts below and of the view that the agreement to sell does not bear the signatures of the scribe PW-2 Kharaiti Lal, thus, his testimony cannot be looked into. In my view, the appellant-plaintiff has failed to discharge the onus by proving the agreement to sell and, therefore, rightly so the Courts below have declined the relief. The findings arrived at by the Courts below are on the basis of the preponderance of the evidence.

For the foregoing reasons, I do not intend to differ with the concurrent findings, which are based on appreciation of oral and documentary evidence. No case for interference is made out.

Appeal stands dismissed.

December 08, 2016

(AMIT RAWAL)

ramesh

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No