

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

**RSA-3680-2011 (O&M)
Date of decision : 20.09.2016**

Dhan Singh

... Appellant

Versus

Deep Chand and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Hooda, Advocate
for the appellant.

None for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit seeking declaration and permanent injunction on the premise that he had been put in possession on the basis of the agreement to sell dated 13.08.1991 after having paid the entire total sale consideration of ₹ 35,000/- has been dismissed, by both the Courts below.

Mr. R.S. Hooda, learned counsel appearing on behalf of the appellant-plaintiff submit that appellant-plaintiff is entitled to seek the permanent injunction as per Section 53-A of the Transfer of Property Act and declaration of title, as the defence taken by the defendants has not been proved in accordance with law i.e. signatures having been obtained by playing fraud and misrepresentation. The agreement to sell (Ex.P-1) and the receipt have duly been proved through the testimony of the attesting witnesses and despite observing, both the Courts below did not grant

injunction. Once the agreement to sell has been proved and there is recital of handing over the possession which deemed to have been given, all these factors have not been taken care of, thus, the Courts below erroneously declined the relief, therefore, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

In the present appeal, notice of motion was issued on 06.05.2014 and the respondents have not been served. On the last date of hearing, this Court had ordered for serving the respondents through *dasti* process, but the report is that the *dasti* summons have not been issued as the office of Mr. R.S. Hooda, failed to collect the same, I am of the view that the appellant is trying to delay the adjudication of the appeal which is pending since 2011 in a suit filed as way back as on 12.04.2001. The relief sought in the suit was *ex facie* barred by law as per the provisions of Section 41-h of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act'). No doubt the person who has actually put in possession on the basis of the agreement to sell, can seek the protection as envisaged under the provisions of Section 53-A of the Transfer of Property Act for that direct and cogent evidence has to be led. It is a case of the appellant-plaintiff that after purchasing the plot, raised the construction, nothing prevented him to place on record the documents i.e. Electricity Connection, Voter Card, Mobile phone Bill etc., having failed to do so, the agreement to sell would not be sufficient to prove the same. Once, the suit was not maintainable, the consequential relief of injunction cannot be granted.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the

appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

20.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No