

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

**RSA-2505-2012 (O&M)
Date of decision : 27.09.2016**

Islam and others

... Appellants

Versus

Zakir

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Hooda, Advocate
for the appellants.

Mr. Ashish Gupta, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the concurrent findings of fact and law, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 19.08.1998 in respect of land measuring 9 kanals 8 marals, has been decreed by both the Courts below.

Mr. J.S. Hooda, learned counsel appearing on behalf of the appellants-defendants submits that on the same date, the appellant-defendant had got executed registered GPA dated 20.08.1998 (Ex.P-3) in favour of father of respondent-plaintiff. The alleged total sale consideration of ₹ 1,82,125/- was already paid, but the possession had not been taken. It is unimaginable or incomprehensible that a person, who paid the entire sale consideration, did not take the possession. In fact, the signatures on the agreement to sell have been obtained with an intention to get the GPA. All

these facts have been escaped to the notice of both the Courts below, thus, urges this Court for setting aside the findings under challenge.

Mr. Aashish Gupta, learned counsel appearing on behalf of the respondent-plaintiff submits that preceding to the filing of the suit, a legal notice dated 26.03.2004 was sent. If at all, there was no truth, nothing prevented the appellants-defendants to take the appropriate measures in accordance with law. Time was not essence of agreement to sell. The purpose of obtaining the GPA in favour of the father of the respondent-plaintiff was that plaintiff was involved in a criminal litigation and he was unable to execute and register the sale deed. The suit was filed on 21.04.2004 i.e. as per the provisions of the Article 54 of the Limitation Act. The concurrent findings of fact cannot be interfered until and unless there is a illegality and perversity, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book. The foremost question in the present appeal arisen is that whether registered GPA dated 20.08.1998 till date has been cancelled or not, answer is no, therefore, the appellants-defendants had intended to sell the property. The equity lies in favour of the respondent-plaintiff as nothing prevented him to get the sale deed executed on the basis of the GPA, yet chose to file the suit and disclosed everything. In my view, the denial of the agreement to sell, much less, power of attorney, was nothing, but an act of greed/aggrandizement. The respondent-plaintiff has been able to prove the ingredients of Section 16(c) of the Specific Relief Act and therefore, the Courts below have rightly exercised the discretion under Section 20 of the Specific Relief Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by 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.

27.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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