

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

RSA-552 of 2011 (O&M)

Date of decision: 08.02.2016

Megh Raj and others

...Appellants

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Rakesh Chopra, Advocate
for the appellants.

Mr. Arvind Kashyap, Advocate
for the respondent.

Jitendra Chauhan, J. (Oral)

The plaintiff/respondent filed suit for specific performance. The trial Court vide judgment and decree dated 04.04.2009, decreed the suit.

2. Aggrieved against the findings of trial Court, the defendants/appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 10.04.2010.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the defendants/appellants.

4. It is contended that the learned trial Court has gravely erred while decreeing the suit of the plaintiff/respondent for specific performance. The plaintiff/respondent had filed the suit regarding 6 K-19 M of land inter alia pleading that the land in question was already under mortgage with the plaintiff-responder, vide mortgage deed dated 17.05.1999 for a sum of Rs.45,000/- and that vide agreement to sell dated 03.06.2000, the appellants/defendants agreed to sell the land in question at the rate of Rs.25,000/- per acre and further agreed to execute and get registered the sale deed after 05.06.2001. Furthermore, the learned Appellate Court in the same manner has also upheld the judgment and decree, without appreciating the material facts on record. Both the Courts below have failed to appreciate the fact that the respondent/plaintiff failed to prove the agreement. In fact, there was no continuous readiness and willingness on the part of the respondent/plaintiff to get the sale deed executed as he was never equipped with requisite amount of balance sale

consideration or registration expenses.

5. On the other hand, the learned counsel for the respondent states that the appellants had deliberately not caused representation before the Sub Registrar to execute the sale deed. The presence of the respondent recorded before the office of Sub Registrar which had been duly substantiated by the testimony of PW-3, Harjit Kaur, Clerk Tehsil Office Bassi Pathana. The respondent was always ready and willing to perform his part of the agreement. Moreover, the land in dispute was already under mortgage with possession in favour of the respondent.

6. I have heard the rival contentions of learned counsel for the parties.

7. The suit for specific performance of agreement to sell dated 03.06.2000, Ex.P2, was to be executed up to 05.06.2001. The execution of agreement was duly proved by the testimony of PW-2, Arwinder Singh, the scribe of the agreement. The scheduled dates i.e. 05.06.2001 and 06.06.2001 being holidays, the respondent/plaintiff got recorded his presence before the Sub Registrar on 07.06.2001 to get the agreement to sell executed, however, the appellant/defendants did not appear before the Sub Registrar for execution of the agreement. The

appellants/defendants had taken the stand that the agreement to sell was executed as security for repayment of loan amount, however, no document or evidence in this regard had been brought on record. The land in dispute was already mortgaged with possession in favour of the respondent, which is duly proved, vide mortgage deed Ex.P1. Therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties.

8. This Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

08.02.2016

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(JITENDRA CHAUHAN)
JUDGE