

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

RSA No.3932 of 2012 (O&M)

Date of decision : 04.04.2016

Nirmal Singh

...Appellant

Versus

Mohinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Surinder Pal Singh, Advocate for
Mr. A.S. Kalra, Advocate for the appellant.

Mr. Sandeep Singh Deol, Advocate for respondent No.8.

AMIT RAWAL, J. (Oral)

CM No.10590-C of 2012

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands allowed.

CM No.10589-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 190 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit for specific performance of the agreement to sell, has been declined by both the courts below.

Mr. Surinder Pal Singh, Advocate for Mr. A.S. Kalra, learned counsel appearing on behalf of appellant submits that both the Courts below have erroneously and perversely declined the relief of specific performance, much less, refund of earnest money on the ground that the agreement to sell dated 04.02.1997 has not been proved. He submits that total sale consideration was ₹2,05,000/- per killa of 8 kanals and earnest money of ₹3 lac was paid. Defendant was none-else but father. Defendant No.1 during the currency of the agreement vide sale deed dated 30.09.2007 sold the property bearing land measuring 22 kanal 13 marlas to defendant No.2. The suit cannot be said to have been barred by provision of Order 2 Rule 2 CPC as the previous suit was only for injunction and whereas specific relief has been sought only when the period of execution and registration of the sale deed i.e. 29.07.1997 arose and the suit has been filed in March, 2006. The plaintiff has always been ready and willing to perform his part of agreement and examined one of the witness of the agreement to sell and thus urges this Court to formulate substantial question of law as culled out in memorandum of appeal.

Mr. Sandeep Singh Deol, learned counsel appearing on behalf of respondent-defendant submits that plaintiff failed to discharge the onus as per Section 111 of the Indian Evidence Act as relationship between the vendor and vendee was of son and father. Father had denied execution of the agreement to sell in previous round of litigation. The earlier suit was filed on 29.09.1997. Withdrawal of the suit and filing of the fresh suit seeking specific performance after almost lapse of eight years lacks readiness and willingness, much less, hit

by provision of Order 2 Rule 2 of the Code of Civil Procedure and rightly so, the suit on this premise has been dismissed.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal for the reasons that once cause of action had accrued in favour of appellant-plaintiff to seek vindication of the grievance, nothing prevented him to claim the relief of specific performance but only suit for injunction was filed. It is matter of record that earlier suit was dismissed in default on 20.02.1998 and no explanation has come forth in not seeking restoration. Even there was no readiness and willingness from 20.02.1998 till filing of the suit in March 2006, thus provision of Order 2 Rule 2 conspicuously comes into play. Even the payment of earnest money has not been proved as the agreement to sell lacks the specific requirement of law. The agreement to sell bear the signatures of the vendor whereas documentary evidence brought on record shows that vendor had appended signature and thumb impression. No effort has made to examine thumb impression.

In view of aforementioned, I am of the view that suit has rightly been dismissed being barred by Order 2 Rule 2 CPC, much less, readiness and willingness was conspicuously wanting.

I do not intend to differ with the findings rendered by the Courts below, much less, no substantial question of law arises for determination by this Court.

Dismissed.

04.04.2016

pawan

**(AMIT RAWAL)
JUDGE**