

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

**RSA No.3862 of 2013 (O&M)
Date of Decision.29.08.2016**

Rakesh Kumar

.....Appellant

Vs.

Jagdish and others

.....Respondents

Present: Mr. Shiv Kumar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact where the the suit claiming possession by way of specific performance of agreement to sell dated 15.03.2005 has been partly decreed whereby he has been held entitled for refund of the earnest money along with interest 9%.

Mr. Shiv Kumar, learned counsel appearing for the appellant-plaintiff submits that respondents-defendants No.1 and 2 entered into agreement to sell dated 15.03.2005 in respect of suit land on payment of ₹1,53,700/- against the total sale consideration of ₹3,20,000/- but defendant Nos.1 and 2 had sold the property vide sale deeds dated 28.09.2005 and 24.10.2005. Both the Courts below have wrongly put the onus upon the plaintiff. The defendants had taken up stand of previous agreement to sell dated 20.02.2004 and 21.02.2005 resulting into the aforementioned sale deeds. The Courts below have rendered the finding in favour of the plaintiff regarding the agreement to sell but did not grant discretionary relief on the premise that the plaintiff has failed to discharge the onus *viz-a-viz* antedating of the agreement to sell. He submits that such finding is illegal and perverse

as the umpteen number of documentary evidence had been brought on

record to prove the aforementioned fact. He further submits that the respondent has failed to examine Randhir Singh to prove the fact that he got the sale deed executed in favour of the nominee, respondent No.1 in pursuance of the old agreement to sell, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn up in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. The fact remains that both the agreement to sell of defendants are prior in time to one of the appellant-plaintiff and sale deeds are also of the year 2005 i.e. 28.09.2005 and 24.10.2005 whereas the target date in respect of the agreement to sell of the appellant was 14.03.2006. In this aspect of the matter, the Courts below did not grant discretionary relief and ordered for refund of the earnest money. I am in full agreement with the Courts below in not granting the discretionary relief as the said finding is based on appreciation of the documentary as well as oral evidence as the appellant-plaintiff has failed to prove the fact that the aforementioned agreement to sell was ante-dated in order to thwart the claim of the defendants and failed to discharge the onus.

For the foregoing reasons, I am of the view that the relief granted by the Courts below is perfectly legal and justified. I do not find any reason to differ with the same, much less, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No