

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

**RSA-2650-2016 (O&M)
Date of decision : 16.09.2016**

Surjit Singh

... Appellant

Versus

Kewal Krishan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurcharan Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking mandatory injunction directing the respondent-defendant to get the sale deed registered after receipt of the balance sale consideration.

Mr. Gurcharan Singh, learned counsel appearing on behalf of the appellant-plaintiff submits that except for the payment of Court fees, the relief sought in the suit was identical one and therefore, the rigours of Section 41-h of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') should not come in the way. All these aspects were escaped to the notice of both the Courts below, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that when the efficacious remedy is available for the appellant-plaintiff to seek the specific performance of the agreement to sell, in order to avoid the wriggle out of the payment of Courts fee and other statutory relief, the provisions of Section 39 of the 1963 Act

cannot be applied. For the sake of brevity, the provisions of Sections 39 and 41-h of the 1963 Act reads thus:-

39. Mandatory injunctions.—*When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.*

41. Injunction when refused:-

41-(h) *when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust”.*

Rightly so, the Courts below have held that the suit is not maintainable.

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.

16.09.2016
yogesh

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No

✓
Whether Reportable Yes/ No