

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

RSA No.3173 of 2016 (O&M)

Date of Decision.09.08.2016

Smt. Sawarn Kaur and others

.....Appellants

Vs.

Om Parkash and another

.....Respondents

Present: Mr. HPS Bhinder, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.8502-C of 2016

For the reasons stated in the application, delay of 23 days in filing the appeal is condoned.

Application is allowed.

RSA No.3173 of 2016

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the suit of the plaintiff for possession by way of specific performance, has been decreed.

Mr. HPS Bhinder, learned counsel for the appellants submits that appellants-defendants are legal representatives of Jarnail Singh, who had executed an agreement to sell dated 20.01.2005 in respect of land measuring 7 kanals 11 marlas, agreed to be sold, @ ₹1,70,000/- per acre against the payment of earnest money of ₹74,000/-. The stipulated date was 11.01.2006. He further submits that the plaintiff had knowledge of the

death of Jarnail Singh and therefore, he could not have presented himself before the office of Sub Registrar, being the resident of the same village. In view of the fact that the suit had been filed two years thereafter i.e. on 17.01.2008, the readiness and willingness was wanting.

He also submits that the property was already mortgaged and mortgage deed had been produced as Ex.DW2/3. The mortgage was for an amount of ₹1,60,000/- and a sum of ₹2,50,000/- was at that time due. There was no entry in the revenue record with regard to agreement to sell, thus, urges this Court for setting aside of the judgments and decrees passed by the Courts below, as both the Courts below have not appreciated the aforementioned facts by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellants-defendants and appraised the paper book. It is a matter of record that the respondent-plaintiff has presented himself at Sub Registrar's office on 11.01.2006. PW-1, Dalip Kumar, one of the marginal witnesses, has deposed to prove the agreement to sell Ex.P1. PW2, Lachhman Dass, deed writer has deposed that he scribed the agreement to sell on the asking of Jarnail Singh. PW-3, Om Parkash, has also deposed on the lines as pleaded in the plaint and proved his signatures over the agreement. The defendants have not been able to dispel the circumstances under which Jarnail Singh appended his signatures. The story of commission agent has not been proved. Once the defendants have denied the execution of the agreement, they have to discharge the onus by disproving the signatures of Jarnail Singh on agreement to sell before the Sub Registrar. The fact remains that the plaintiff was always ready and willing to perform his part of the contract

and the suit was filed on 17.01.2008. Rightly so, both the Courts below have exercised the discretion under Section 20 of the Specific Relief Act. Mortgage of the property does not invalidate the terms and conditions of the agreement, much less, deprive the Court from granting the specific relief.

For the reasons aforementioned, I do not find any illegality and perversity in the judgments and decrees under challenge, much less, no ground for interference is made out. There is no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 09, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No