

RSA No.4126 of 2016 (O&M)

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

RSA No.4126 of 2016 (O&M)

Date of decision:16.08.2016

Gurdarshan Singh

... Appellant

Vs.

Jaswant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Inderjit Sharma, Advocate, for
Mr. Harminderjeet Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, suit seeking specific performance of the agreement to sell dated 20.04.2005 in respect of plot measuring 210 square yards, agreed to be sold for a total sale consideration of ₹15,00,000/- against the receipt of earnest money of ₹10,50,000/- has been decreed by both the Courts below.

Mr. Inderjit Sharma, Advocate for Mr. Harminderjeet Singh, learned counsel appearing on behalf of the appellant-defendant submits that agreement to sell was registered under threat, coercion and pressure as the plaintiff is none-else but real maternal uncle of Inderjit Singh, who was complainant in the FIR. Gurpreet Singh and Harmanpreet Singh were co-accused and Gurdarshan Singh was co-complainant in the aforementioned FIR. The Court has non-suited the appellant on the premise that relationship of Inderjit Singh and Jaswant Singh has not been proved, whereas, Jaswant

Singh had admitted that Inderjit Singh was his nephew but the other side had led the evidence that there was some other Inderjit Singh. It is sufficient evidence to discard the discretionary relief under Section 20 of Specific Relief Act. The agreement to sell was emphatically denied. The respondent-plaintiff's alleged attesting witnesses to agreement to sell have also not been examined. There are lot of contradictions. The extended date for execution and registration of the sale deed was 02.01.2006 and the suit was filed on 04.01.2006. The extension was at the behest of the respondent-plaintiff which shows that parties had not intended to enter into agreement to sell but it was a document of security. Gurpreet Singh and Jaspreet Singh were known to the appellant-defendant, who had to go abroad and introduced the aforementioned persons and in this background of the matter, the alleged surety bond/indemnity bond/guarantee was executed. All these facts have escaped from the notice of the Courts below and thus, there is illegality and perversity in the judgments and decrees of the Courts below.

I have heard learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Inderjit Sharma, for, Malkiat Singh son of Kehar Singh have proved the execution of the agreement to sell which shows that parties had entered into agreement to sell for the sale of plot against the total sale consideration as mentioned above, much less, payment of earnest money of ₹10,50,000/-. A telegraphic notice Ex.P3 was preceded to filing of suit. During the course of hearing, it has been stated that the FIR is still pending in which the plaintiff is not an

accused, much less, co-accused. The defendant has not been able to prove that the plaintiff was not ready and willing to perform his part of the contract. In the absence of the same, story coined by the appellant-defendant was not proved. In my view, the Courts below have rightly exercised the discretionary relief under Section 20 of Specific Relief Act that the respondent-plaintiff had always been ready and willing to perform his part of the contract. In the sequence of facts noticed hereinabove, the concurrent findings of facts can be interfered, in case, the appellant-defendant has been able to bring on record the gross illegality and perversity.

In view of the aforementioned, I am of the view that no evidence/corroborative evidence has been led to belie the testimonies of the witness. Even the respondent-plaintiff has been able to prove his readiness and willingness by marking his presence before the office of Sub Registrar on the stipulated date.

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 of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 16, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No