

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

RSA No.4228 of 2016 (O&M)

Date of Decision.22.08.2016

Chamkaur Singh

.....Appellant

Vs.

Dharam Pal Singh

.....Respondent

Present: Mr. Mohinder Ahuja, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

C.M. No.10920-C of 2016

For the reasons stated in the application, the application for making good the deficiency of Court fee is allowed.

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The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit at the instance of the respondent-plaintiff seeking specific performance of the agreement to sell dated 11.08.2008 in respect of the property against payment of entire sale consideration of ₹3 lacs, has been decreed.

Mr. Mohinder Ahuja, learned counsel appearing for the appellant submits that the aforementioned agreement to sell was specifically denied. In fact, the defendant had taken a loan of ₹3 lacs with agreed rate of interest @12% and to execute the pronote, the respondent-plaintiff took the appellant-defendant to court complex and obtained his signatures on blank papers. Later he converted the blank papers into agreement to sell. In fact, the appellant-defendant is not the owner of the property and the ownership

is of his wife. He further seeks liberty of this Court for remanding back the

matter as the aforementioned evidence has not been placed on record.

He further submits that once the plaintiff had paid the entire sale consideration, non taking of possession raised question on credibility of the document, thus, urges this Court for setting aside the judgments and decrees passed by the Court below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. Even the present appeal is not accompanied by application under Order 41 Rule 27 CPC to place on record the evidence that supports the averments qua ownership of the property. It would be too late in a day to raise plea in the absence of pleadings, much less, evidence. On the contrary, the agreement to sell has been proved by the testimony of Gurcharan Singh attesting witness and the statement of plaintiff shown readiness and willingness. The suit was preceded by legal notice dated 5.11.2008 and the suit has been filed on 8.12.2008. If at all, the defendant had been duped by the plaintiff, he ought to have filed a criminal case in accordance with law on receipt of notice. Having failed to take such action, I am of the view that the plea of alleged loan is an afterthought. Even he has failed to show as to how much amount *viz-a-viz* payment of ₹3 lacs has been repaid in discharge of liability.

In view of the above, the appellant-defendant has miserably failed to prove the defence raised before the Courts below. On the contrary, plaintiff has proved the readiness and willingness and therefore, both the Courts below have rightly exercised the discretion. I do not differ with the findings rendered by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no ground

for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 22, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No