

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

RSA No.4337 of 2016 (O&M)

Date of Decision.17.10.2016

Gurcharan Singh and others

.....Appellants

Vs

Harjinder Singh

.....Respondent

Present: Mr. P.K.S. Phoolka, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.11331-C of 2016

For the reasons stated in the application, delay of 135 days in
refiling the appeal is condoned.

Application is allowed.

C.M. No.11332-C of 2016

For the reasons stated in the application, permission for making
good the deficiency of court fee is granted.

Application is allowed.

RSA No.4337 of 2016 (O&M)

The appellant-defendants are aggrieved of the concurrent
finding of fact whereby the suit filed by the respondent-plaintiff seeking
specific performance of the agreement to sell dated 2.5.2008 in respect of
the land measuring 13 kanals 6 marlas agreed to be sold @₹6,40,000/- per
acre, totalling ₹10,64,000/- viz-a-viz receipt of earnest money of ₹2,70,000/-
paid on the date of execution of the agreement to sell and another ₹5 lacs on
28.04.2009 when the stipulated date was extended from 30.04.2009 to

28.10.2009, has been decreed by both the Courts below.

Mr. PKS Phoolka, learned counsel appearing for the appellants submits that the agreement to sell was emphatically denied. The onus was shifted upon plaintiff to prove its execution, much less, receipt of the earnest money which he has miserably failed to prove, as only one attesting witness and scribe have been examined who were not consistent and coherent in their statements. The extension allegedly written on the backside of the agreement to sell is a self-serving document as it does not bear the signatures of the appellants-defendants, much less, there is no separate receipt of ₹5 lacs. The plaintiff had not been found always ready and willing to perform his part of the contract, thus, urges this Court for setting aside the judgments and decrees under challenge by formulating the substantial questions of law as drawn in the memorandum of appeal as there is gross illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Phoolka, for, the agreement to sell is executed and the payment of the earnest money and another amount of ₹5 lacs on 28.04.2009 have been proved through the testimony of the attesting witness and the scribe, in essence, the respondent-plaintiff has been able to discharge the onus which shifted on the defendants but the same has not been refuted as no direct, cogent or corroborative evidence has been led to disprove the signatures on the aforementioned dates and as well as the agreement to sell. There was complete denial to the execution of the agreement to sell but on the contrary, the respondent-plaintiff has proved on record that on the stipulated/extended date he had appeared before the office of Sub Registrar

but the defendants did not appear for execution of the same, thus, ingredients of Section 16(c) of the 1963 Act have also been proved.

The contention of the counsel for the appellants-defendants that the scribe of the agreement to sell and scribe of the writing of extension are two different persons, as usually it has to be done by same person, is equally without force and merit. It is not a requirement of law that in case the parties intended to extend the stipulated date, it should be scribed by the very same person. It can be done by a different person.

For the foregoing reasons, the findings rendered by both the Courts below are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 17, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No