

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

RSA-1199 of 2014 (O&M)

Date of decision: 28.03.2016

Balbir Singh

...Appellant

Versus

Naranjan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The appellant/plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 09.12.2004. The trial Court vide judgment and decree dated 14.11.2011, partly decreed the suit. The Appellate Court had also affirmed the findings of the trial Court.

2. Aggrieved against the findings of Courts below, the appellant/plaintiff has preferred the present regular second appeal.

3. It is contended by the learned counsel for the appellant that respondent/defendant being owner of 4 kanals of land entered into an agreement to sell dated 09.12.2004, who agreed to sell the land in dispute to the plaintiff @ Rs.4,25,000/- per acre whereas, Rs. 1,50,000/- was paid as earnest money at the time of execution of agreement to sell. The agreed date fixed for execution of sale deed, was 10.12.2005, but that being Sunday, the sale deed could not be executed. On 12.12.2005, the appellant remained present in the office of Sub Registrar to perform his part of contract but the defendant/respondent did not turn up, leading to filing of present suit. The learned counsel contends that the plaintiff/appellant has always been ready and willing to perform his part of the contract, however, the respondent had intentionally backed out from his liability. The plaintiff had duly proved his case by examining PW-1, Daljit Singh, deed writer, who proved the original agreement to sell dated 09.12.2004 as Ex.P2 and PW-2, Joga Singh, Lamberdar, the marginal witness, who also supported the version of the appellant. The agreement to sell had been duly proved on record by the appellant, however, both the Courts below have failed to grant the relief of specific performance of the agreement to sell

to the appellant.

4. Heard, the learned counsel for the appellant.

5. The case of the plaintiff/appellant is that the respondent entered into an agreement to sell dated 09.12.2004, Ex.P2, qua land measuring 4 kanals @ Rs. 4,25,000/- per acre. An earnest amount of Rs.1.50 lacs was paid at the time of execution of agreement to sell. But the respondent/defendant failed to execute the sale deed in favour of the plaintiff/appellant. The execution of agreement to sell was duly proved by the plaintiff, however, the defendant denied the factum of execution of agreement to sell pleading that his signatures had been obtained on blank papers for a loan transaction. The plaintiff/appellant in support of his claim had produced jamabandi for the year 2002-03 which shows that the suit land had already been mortgaged by the defendant for a sum of Rs.3,10,000/- with P.A.D. Bank, vide rapat No.52 dated 09.10.1999, prior to execution of agreement to sell in question. The plaintiff himself had brought on record the said jamabandi, despite that, the plaintiff entered into agreement to sell qua the same property and paid an earnest money of Rs.1.50 lacs. The defendant had already mortgaged his land at a higher rate,

therefore, it is highly improbable that he would sell the land to the plaintiff/appellant at a lower rate than the prevalent market price or that the plaintiff had entered into an agreement to sell qua the land in dispute after knowing the fact that the land had already been mortgaged. Thus, both the Courts have rightly doubted the intention of the plaintiff. In the face of the evidence on record, the stand taken by the appellant that an agreement to sell the land was executed by the defendant, cannot be accepted. The learned trial Court has held that it was in fact not an agreement to sell, but it was a document executed in lieu of a loan transaction. The intention of the parties was not to sell or purchase the land at the time of execution of the agreement. This Court concur with the observations of the lower Court. The trial Court has rightly granted alternative relief of refunding the money after partly decreeing the suit. There is no illegality or perversity in the judgment passed by the Courts below. No substantial question of law arises for consideration. Hence, no inference is called for.

Dismissed.

28.03.2016

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(JITENDRA CHAUHAN)
JUDGE