

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

RSA No.5724 of 2015 (O&M)

Date of Decision.30.08.2016

Sh. Avtar Singh

.....Appellant

Vs.

Balbir Singh

.....Respondent

Present: Ms. Vanita Sapra Kataria, Advocate
for the appellant.

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)

The appellant-defendant is aggrieved of the decretal of the suit seeking possession by way of specific performance of agreement to sell by the trial Court and appeal filed by the appellant-defendant against the same has also been dismissed.

Ms. Vanita Sapra Kataria, learned counsel appearing for the appellant-defendant No.1-vendor submits that agreement to sell dated 22.07.2011 was never entered into. The beneficiary-plaintiff is none else but the cousin brother of the defendant, who was an educated person and played fraud as the defendant is a rustic and drunkard person. In pursuance of receipt of the legal notice dated 19.11.2011, the appellant-defendant appeared before the office of Registrar on 25.11.2011, marked his presence and stated that he has been defrauded and denied to execute any agreement to sell. Two attesting witnesses, one has appeared as PW2 and another as DW2. Both stated that no earnest money of ₹3 lacs was paid in their

presence. All these facts have gone unnoticed and there has been a gross illegality, perversity in rendering the findings by misconstruing and misreading of the documents, thus, urges this Court for setting aside the judgments and decrees passed by the Courts by formulating the substantial questions of law as drawn in the memorandum of appeal. In fact, it was a loan transaction as the plaintiff had agreed to pay off the loan liability to the Cooperative Society from where loan had been obtained by the defendant.

I have heard learned counsel for the appellant and appraised the paper book. Preceding to the filing of the suit, a legal notice was served upon the appellant and the appellant could have replied the same instead of marking the presence before the Registrar but before that, he had already executed a registered sale deed dated 14.11.2011 as the target date was 21.01.2012. Having left with no other option, the plaintiff instituted the suit on 28.11.2011 as breach had already been committed. Once the agreement to sell has been denied, the defendant cannot take up the plea of readiness and willingness. Even otherwise, there was no occasion for the defendant to appear before the office of Registrar when he had no saleable right and interest in the property.

In my view, both the Courts below have rightly exercised the discretion under Section 20 of the Specific Relief Act, 1963. If at all, there was some truth in the averments made in the written statement, nothing prevented the defendant to lodge appropriate complaint before the competent authority and the plea of fraud cannot be taken for the first time before this Court.

For the foregoing reasons, I do not find any reason to differ the findings rendered by the Courts below as the same are based upon correct

appreciation of oral and documentary evidence, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out. The second appeal is dismissed.

August 30, 2016

Pankaj*

(AMIT RAWAL)

JUDGE

Whether reasoned/speaking

Yes

Whether reportable

No