

RSA No.3073 of 2014 (O&M)

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

RSA No.3073 of 2014 (O&M)

Date of decision:29.08.2016

Kashmir Kaur and another

... Appellants

Vs.

Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Prateek Pandit, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.7304-C-2014

For the reasons stated in the application, duly supported by an affidavit, delay of 17 days in filing the appeal is condoned.

C.M. stands disposed of.

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Appellant-plaintiffs are aggrieved of the concurrent findings of facts and law, whereby, suit seeking confirmation of the possession in respect of agreement to sell dated 01.07.1987 and subsequent writing dated 17.11.1993, has been dismissed by both the Courts below.

Mr.Prateek Pandit, learned counsel appearing on behalf of the appellant-plaintiffs submits that in pursuant to agreement to sell dated 01.07.1987, the appellant-plaintiffs had been put in possession of the property in dispute after making the payment of Rs.17,000/- against the total sale consideration of Rs.31,000/- and thereafter, vide writing dated 17.11.1993, another sum of Rs.37,000/- has already been paid. Though

number of opportunities to lead evidence were taken, but the Court ought not to have dismissed the suit under the provisions of Order 17 Rule 3 of Code of Civil Procedure (hereinafter referred to as “CPC”) and seeks the remand of the case on the premise that by affording opportunity to the plaintiffs to lead evidence subject to any terms and conditions.

I have heard learned counsel for the appellant-plaintiffs and appraised the judgments and decrees of the Courts below and of the view that the suit aforementioned, was filed on 01.05.2007. The appellant-plaintiffs did not lead evidence despite availing number of opportunities. I am of the view that suit is not maintainable as the plaintiffs had not sought declaration, if the time was not essence of the agreement.

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, to remand the matter back as the plaintiffs have miserably failed to discharge the onus. No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No