

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

RSA No.3121 of 2014 (O&M)

Date of decision : 06.12.2016

Surjit Singh and another

...Appellants

Versus

Balwant Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Lokesh Sharma, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit seeking specific performance of the agreement to sell dated 07.12.2002 with respect to the property as mentioned in the head note of the suit, agreed to be sold for a total sale consideration of ₹6,00,000/- against the payment of earnest money of ₹60,000/-, has been dismissed by both the Courts below.

Mr. Lokesh Sharma, learned counsel appearing on behalf of appellants-plaintiffs submits that defendants admitted the execution and registration of the agreement but denied the discretionary relief, much less, alternative relief on the premise that plaintiffs have failed to prove the execution of the same. In fact, the alleged person who had gone to the office of Registrar namely Raja Singh had already died on 24.06.2005, whereas

target date for registration and execution of the sale deed was 05.12.2005. Even suit was filed after 8 months i.e. on 10.08.2006, therefore, readiness and willingness was always there. Mere inadequate consideration should not be fatal for non-granting of the discretionary relief. Courts below have erroneously relied upon the previous round of litigation on the premise that same was not brought on record which had no meaningful purpose for adjudication of the lis as suit has to be decided on the preponderance of the evidence, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no force and merit in the aforementioned submissions as the appellants-plaintiffs had unequivocally admitted of having not sufficient cash at the stipulated date which itself is a indicator of the fact that he was not always ready and willing, therefore, discretionary relief has rightly been declined. As regards the refund of the earnest money, stand of the defendants was that once plaintiffs have failed to come forward for execution and registration of the sale deed, the amount stood forfeited. The terms and conditions of the agreement also envisage, the aforementioned Act.

In my view, factum of the death of Raja Singh has not been proved on record. All these factors have weighed in the mind of the Courts below in declining the relief.

For the foregoing reasons, I do not intend to differ with the same.

Accordingly, present appeal is dismissed.

No explanation has also come forth for filing the appeal

belatedly by a period of 201 days. Explanation given is lacking cogent reasons.

Appeal is also dismissed on the ground of delay.

06.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No