

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

**Regular Second Appeal No.931 of 2015 (O&M)
Date of decision: 16.8.2016**

Thakri Devi and others

...Appellants

Versus

Sharvan Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.K.S.Sidhu, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of fact whereby the suit seeking specific performance of the agreement to sell dated 11.4.2000 in respect of the suit land agreed to be sold for a total consideration of ₹ 3 lac against receipt of ₹ 1.5 lac has been decreed by both the courts.

Mr.Sidhu learned counsel appearing on behalf of the appellant submits that the agreement to sell aforementioned and receipt of the earnest money was specifically denied. It was stated that ₹ 1.5 lac share money was contributed by the plaintiff in the firm M/s Ankur Agro Industries. No doubt aforementioned payment was made through cheque and the same was deposited in the account of erstwhile vendor, successor-in-interest of the defendant namely Khushi Ram but after two days, same was taken off and

deposited into the account of the firm. It is the conceded position on record that vide partnership deed dated 24.4.2000 Ex.DW3/B the plaintiff along with his brother were inducted into the partnership of the aforementioned firm with effect from 11.4.2000, therefore, execution of the agreement to sell was incidental/co-related. The aforementioned document in fact was entered into for the purpose of security by signing on the blank papers which later on has been converted into agreement to sell. The brother of the plaintiff has been examined as DW2 who also reported that he was conversant with the record of the firm and had maintained the same and the record also indicated the expenses for purchasing the stamp papers had been used and rendered as an agreement to sell. All these factors have not even been touched or referred to thus there is illegality much less perversity. This discretion ought not to have been exercised as the suit was filed on 23.4.2005. He submits that this aspect can be looked into even after the appellant denied agreement to sell and thus, urges this Court for setting aside of the impugned judgment and decree.

I have heard the learned counsel for the appellant and perused the paper-book and found there is no merit in the submission of the learned counsel for the appellant for the reason that the defendants-appellants have denied signature on the agreement to sell. It is also admitted position on record that payment of ₹ 1.5 lac paid by way of cheque was deposited in the personal account of the vendor and once the vendor received the money, he was/is free to deal with the money in any manner he likes. Once the amount was deposited in the partnership account, the transaction cannot be linked with the alleged partnership deed referred above. It is settled law that a person who has denied agreement to sell cannot take the plea of readiness

and willingness. Even for the argument sake, the same is taken to be a totally different ground but the fact remains that there had been two legal notices which have been denied by the respondents much less averments in the plaint of repeated approach for execution of the sale deed and having left high and dry, the respondents filed a suit to protect themselves from the rigors of limitation Act. In my view, the readiness and willingness from the testimony of the attesting witnesses as well as the plaintiff has been proved to the hilt much less expression, “always” as enshrined in Section 16-C of the 1963 Act.

Mr.Sidhu's argument with regard to the statement of the brother regarding one transaction is not accepted as on going through his cross-examination and of other witnesses, the same was with regard to partnership and not with regard to the alleged agreement to sell. Both two are separate transactions. It is matter of co-incidence that two transactions had taken place and the defendants are taking unnecessarily the aid of the same.

For the foregoing reasons, I do not find any illegality or perversity in the impugned judgment much less no substantial question of law arises for consideration in this appeal. No ground for interference is made out.

Dismissed.

(AMIT RAWAL)
JUDGE

August 16, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No