

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

**RSA No.972 of 2015 (O&M)
Date of decision:04.02.2016**

Suresh Kumari ... Appellant
Vs.

Rajinder Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sanjiv Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for specific performance of the agreement to sell dated 30.01.2006, in respect of land measuring 5 kanals 2 marlas agreed to be sold for a total sale consideration of ₹3,00,000/-, has been decreed and the appellant-defendant has been called upon to execute and register the sale deed on receipt of balance sale consideration.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant-defendant submits that agreement to sell was specifically denied by stating that parties to the lis are close relatives and it is was a loan transaction. The value of the land at the time of agreement was much more than mentioned which in the cross

examination has been admitted by one of the plaintiff's witness. The husband of the appellant has died and even the description in the sale deed is ex facie, wrong. The trial Court should not have upheld the findings as undue hardship would be caused as the agreement to sell envisages clause handing over the possession, therefore, the provisions of Registration and Transfer of the Property Act, would apply for want of registration and this fact has totally been ignored by both the Courts below, thus, there is illegality and perversity in the findings rendered by both the Courts below, much less, substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the appellant-defendant and appraised the paper book.

Agreement to sell is dated 30.01.2006 and target date was fixed as 09.01.2007. On that date, over and above earnest money of ₹2,25,000/-, another sum of ₹55,000/- were received by the appellant. Re-payment of alleged amount has not been proved. Had it been so, nothing prevented the appellant to lodge a police complaint to the concerned police authority or to register a criminal case against the respondent. In this regard, no steps have been taken. Even the signatures on the agreement to sell have not been disproved. Vis-a-vis hardship, Explanation Nos.I and II of the Specific Relief Act provide that if the agreement to sell results into hardship, then equitable discretion should not have been exercised. However, no such act of the plaintiff has proved after the execution of the

agreement rendering it un-executable. The suit was filed on 22.11.2007, thus, readiness and willingness cannot be said to be wanting.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 04, 2016
savita