

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
104**

RSA No. 3923 of 2014 &
C.M. No. 9051-C of 2014

Date of Decision: 25.02.2016

Ram Chander

.....APPELLANT

VERSUS

Jabir and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. Virender Rana, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Junior Division) Nuh dated 26.03.2013, whereby the suit for specific performance of contract has been dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Nuh on 01.02.2014.

2. It is the contention of the learned counsel for the appellant that an agreement to sell was entered into between the appellant-plaintiff and the respondents-defendants on 28.06.1985, wherein sale consideration for land measuring 2 Kanal 8 Marlas was fixed at ₹ 10,000/-, out of which ₹ 5,500/- was given as the earnest money. The date fixed for execution of the sale deed was 28.06.1986. On 13.06.1986, an amount of ₹ 6,000/- was paid as

sale consideration but the sale deed was executed qua 1 Kanal and 4 Marlas of land only. The remaining area of 1 Kanal and 4 Marlas fell to the share of Rajjo who has neither come forward to execute her part of agreement to sell and, therefore, the preset suit was filed. He contends that once the due execution of the agreement has been proved on the basis of the evidence led by the appellant-plaintiff, there is no reason why the prayer made in the suit should have been declined when the condition of readiness and willingness and the suit being within limitation having been fulfilled. He contends that the impugned judgments and decree cannot, thus, sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. Although the agreement to sell dated 28.06.1985, which was entered into between the appellant-plaintiff and defendant No. 1-Kishan Lal, who is father of respondent No. 1, has been duly proved but he was owner to the extent of 1 Kanal and 4 Marlas of land only. The remaining 1 Kanal and 4 Marlas was, admittedly, in the ownership of Rajjo. In the agreement to sell or in the receipt of the earnest money, neither the signatures nor the thumb impressions of Rajjo find mention. The agreement to sell has also been disputed by the legal heirs of Rajjo, respondents-defendants No. 2 to 4. As there is no agreement to sell having been entered into between the appellant-plaintiff and Rajjo, who is the owner of remaining land of 1 Kanal and 4 Marlas, which was the subject matter of the agreement to sell dated 28.06.1985, the said agreement to sell could not be pressed into service against her. The findings, as recorded by the Courts below, thus, cannot be

faulted with as the same are based upon the pleadings and the evidence brought on record and on due consideration thereof.

5. No other point has been argued by the counsel for the appellant-plaintiff.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. No. 9051-C of 2014

In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 25, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**