

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

RSA No.3310 of 2013 (O&M)

Date of Decision: 20.09.2017

Rajwant Singh

... Appellant

Versus

Amarjit Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Punia, Sr. Advocate, with
Ms. Harveen Kaur, Advocate
for the appellant.

G.S. Pannu, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL).

The plaintiff is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff filed a suit for specific performance of agreement to sell dated 15.10.1996.

The learned trial Court after appreciating the evidence available on the file, including the statement of Jaswant Singh PW2, who was examined by the plaintiff, held that the defendant had taken a loan and the agreement to sell was not intended to be acted upon.

Learned first appellate Court after reappreciating the evidence has affirmed the aforesaid finding.

Learned counsel for the appellant has tried to persuade me by referring to the statement of PW2 and copy of the settlement Ex. D1 to

assert that the plaintiff was entitled to the relief of specific performance.

Relevant part of the statement of PW2 is as under: –

“It is correct that it is common practice in the villages to get execute an agreement to sell in case loan is taken on interest. The intention for writing agreement to sell is to make sure that the loan is returned alongwith interest in time. My affidavit might have been got prepared by Rajwant Singh and his counsel. However, I signed on the same. It is correct that the defendant had taken Rs.1,23,000/- as loan on interest from the plaintiff. There is one Lambardar by the name of Sarup Singh, in our village. If I am shown his signatures, I can identify the same. Volunteered, he signs in English. In my presence Rs.1,00,000/- (One lac) had been returned by Amarjit Singh to the plaintiff on 27.3.1998 and writing to that effect was executed. Rs.23,000 / - was taken by Amarjit Singh from Rajwant Singh and that amount was also paid to Rajwant Singh on 27.3.1998.”

In view of what has been stated by the witness, who was examined by the plaintiff, it is proved beyond doubt that in fact the agreement to sell was only for the purpose of securing loan and, therefore, the Courts below have rightly concluded that the plaintiff is not entitled to specific performance.

The next submission of the learned counsel for the appellant is that the agreement/compromise Ex. D1 has not been filed in original, only a

photocopy of the same has been filed and, therefore, such document was not admissible in evidence unless an application for secondary evidence is allowed.

Be that as it may, once the witness examined by the plaintiff himself has admitted that it was only a loan transaction, the Courts below have not committed any error in declining the relief of specific performance.

In view of the above, I do not find any good ground to interfere with the finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

20.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No