

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

RSA No. 1542 of 1991 (O&M)

Date of Decision: 14.05.2018

Jagga Singh

. . . Appellant

Versus

Gurmit Singh and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Palak Dev, Advocate and
Mr. Viney Saini, Advocate for
Mr. G.S. Nagra, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
for the respondents.

Amit Rawal, J. (Oral)

The appellant-plaintiff is in regular second appeal against the concurrent findings of fact whereby the suit for specific performance of the agreement to sell dated 26.05.1986 and for permanent injunction restraining the defendants from alienating the suit land to any other person except the plaintiffs from dispossessing the appellant-plaintiff from the suit land measuring 4 kanals comprising in rectangle No.66 Killa No.18/1/1/4-0, 17/2/4-13, 18/1/2/2-12, 14/2/06, 18/2/2/0-19, situated within the revenue limits of Village Gulam Rasul, Hadbast No.305, Tehsil Fazilka, had been decreed in part by ordering alternative relief of return of

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earnest money of Rs.5000/- along with interest @ 6% per annum from the date of institution of the suit till its recovery by the trial Court and upheld by the lower Appellate Court.

Appellant-plaintiff had instituted the suit claiming specific performance of agreement to sell alleged to have been entered into by the appellant-plaintiff with the respondents-defendants of the land measuring 12 kanals 10 marlas for a total sale consideration of Rs.50,000/- against the payment of Rs.5000/- as earnest money. The stipulated date for registration of execution of sale deed was 10.11.1986. As per the averments made in the plaint, the defendants did not turn up before the Sub Registrar, Fazilika for the purpose of execution and registration of the sale deed. The plaintiff instituted the suit on 17.11.1986.

The respondents-defendants, in the written statement, contested the suit, admitting the execution of agreement to sell and receipt of earnest money, but averred that plaintiff failed to establish that he was ready and willing to perform his part of contract right from the date of agreement till the filing of the suit.

In pursuance of such pleading, the trial Court framed issues. Appellant-plaintiff has brought on record document Ex.P-1, affidavit dated 10.11.1986 allegedly attested by the Executive Magistrate, Fazilika on stamp paper of Rs.5/- bearing No.6198 dated 10.11.1986 and also other documents. On the other hand, respondents-defendants brought on record an application Ex.D1 submitted to the office of Sub Registrar, Fazilika for marking their presence which was also endorsed by the Sub Registrar, Fazilika. The trial Court on the basis of documentary evidence

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did not grant the discretionary relief as per Section 20 the Specific Relief Act to the plaintiff and ordered for alternative relief of recovery and appellate Court in appeal affirmed the findings.

Ms. Palak Dev, Advocate appearing on behalf of the appellant-plaintiff submitted that the genesis of the judgment had been on the contents of Ex.D1, which did not bear the signatures of the appellants-plaintiffs on the alleged writing of endorsement, has not been proved. The alleged writing/endorsement dated 10.11.1986 of Sub Registrar has also not been proved except it was tendered in the testimony. Both the parties by supporting statement, tendered documents, therefore, the controversy is of interpretation of the contents of the documents, in the absence of any examination of witness from the office of Sub Registrar. The suit was filed immediately within 7 (seven) days after the expiry of stipulated date which itself clinches readiness and willing as per the provisions of Section 16-C of the Specific relief Act. In support of submission relied upon the judgment rendered by Hon'ble Supreme Court of India in 'Sita Ram Vs. Radhey Shyam' 2007 (5) RCR (Civil) 533.

Per contra, Mr. Sandeep Khunger learned counsel appearing on behalf of the respondents-defendants submitted that the endorsement Ex.D1 before the Executive Magistrate was made in presence of plaintiff, but plaintiff could not produce remaining sale consideration, thus, making it clear that plaintiff was not ready and willing to execute the sale deed urged this Court to uphold concurrent findings of facts and law.

I have heard the learned counsel for the parties, appraised the paper book, record of the Courts below.

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The appellant-plaintiff has not been able to prove by conduct or on the basis of documentary evidence showing continuous readiness and willingness, for, it was incumbent/obligatory on the plaintiff to purchase stamp papers, sent legal notice, coupled with balance consideration for the purpose of registration of sale deed. In the absence of the same, both the Courts below after scrutinizing the oral and documentary evidence, led by the parties, rightly granted the alternative relief of recovery of earnest money with proportionate costs and future interest from the date of institution of the suit till its recovery.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgments and decrees of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

[AMIT RAWAL]
JUDGE

May 14, 2018
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No