

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

**RSA No.171 of 1996 (O&M)
Date of Order:16.03.2018**

Binder Singh

..Appellant

Versus

Gurnam Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K.S.Phoolka, Advocate,
for the appellant.

Mr. Binderjit Singh, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for specific performance of the agreement to sell dated 18.10.1988.

Plaintiffs filed a suit claiming the agreement to sell with respect to land measuring 29 kanals and 14 marlas being 1/5th share of land measuring 148 kanals and 9 marlas. It was pleaded that out of total sale consideration of Rs.49,000/-, Rs.45,000/- was paid and the target date for execution and registration of the sale deed was fixed on or before 30.05.1988. On the target date, plaintiffs visited the office of the Sub-Registrar to get the sale deed executed but the defendant did not come forward to honour his commitment. Plaintiffs filed an application before the Sub-Registrar for marking them present and even affidavit was got attested. Thereafter the plaintiffs issued notice calling upon the defendant to come forward and execute the sale deed but no sale deed was executed and hence

the suit was filed on 19.08.1988.

Defendant contested the suit and pleaded that in fact there is no agreement to sell and the agreement to sell was only to mortgage the land and plaintiffs have fraudulently got executed the agreement to sell. It was pleaded that the agreement to sell is result of fraud. Defendants further pleaded that he has moved an application before the police authorities, Ex.D1 and Ex.D2. It was further pleaded that the market value of the land of same quality is Rs.60,000/- per acre. It was further pleaded that the defendant had mortgaged 9 kanals and 18 marlas of land to the plaintiffs earlier in point of time for Rs.18,000/-.

Both the courts after appreciation of the evidence led by the parties, decreed the suit filed by the plaintiffs.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants has vehemently argued that this agreement was only an agreement for mortgage of the property and there was no agreement to sell. He has submitted that the price of the land was at least Rs.60,000/- per acre and, therefore, more than 3 acres cannot be agreed to be sold for Rs.49,000/-.

On the other hand, learned counsel for the respondents has submitted that the mortgage of 9 kanals land was more than 20 years ago before the date of execution of the agreement to sell and the aforesaid land was redeemed by the order of the Assistant Collector Ist Grade on 25.04.1990. He has also submitted that the land mortgaged was a separate land and not out of the land agreed to be sold. He has further submitted that

brother of the defendant has sold the land to the plaintiffs at the same rate for which the defendant has agreed to sell.

This court has considered the arguments. Defendant-appellant had pleaded fraud. However, particular of fraud were not given in the pleadings. Defendant failed to lead any evidence to prove the fraud. Agreement to sell is in writing and defendant admit his signatures on the agreement to sell. The main plea of the defendant-appellant is inadequacy of the consideration which stands belied from the fact that the brother of the defendant had sold the land to the plaintiffs at the rate at which the defendant had agreed to sell vide agreement to sell dated 18.10.1988.

In the present case, plaintiffs have proved their readiness and willingness to perform their part of the contract. The suit for specific performance of the agreement to sell was promptly filed as the date fixed for execution and registration was 30.05.1988 and the plaintiffs after serving notice on the defendant filed a suit in less than 3 months' time from the date fixed for registration of the sale deed. Plaintiffs pleaded that they were always ready and willing to perform their part of the contract.

Still further, both the Courts have already appreciated the evidence available on the file, which is not shown to be either result of misreading of substantive evidence or non-consideration of the evidence.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March, 16, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No