

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

RSA No.3292 of 2013 (O&M)

Date of decision : 05.04.2018

Ajruddin

...Appellant

Versus

Dariya and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Virendra Rana, Advocate for the appellant.

Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 27.03.2006. It is the pleaded case of the plaintiff that the target date for execution and registration of the sale deed was 30.05.2006, however, defendant No.1 rather on executing the sale deed in his favour has sold the property vide registered sale deed dated 20.04.2006 in favour of defendant No.2. Defendant No.1 did not contest the suit. Defendant No.2 contested the suit and pleaded that there was a previous agreement to sell in his favour dated 20.01.2006, pursuant whereof the sale deed was executed on 20.04.2006.

Both the Courts after examining the evidence have found that the agreement to sell dated 20.01.2006 is a genuine document and, therefore, specific performance of the agreement to sell cannot be granted in favour of the plaintiff. The Courts have ordered the refund of the amount.

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

It is not disputed that in order to prove the previous agreement to sell, defendant No.2 has examined Stamp Vendor Nainsukh as DW2 who has also produced on file a copy of the register Ex.D3. Sh. Harish Kumar, Advocate who was scribe of the agreement to sell has also been examined as DW3. Still further, defendant No.2 appeared in the evidence. No suggestion was given to defendant No.2 that she had the knowledge of earlier agreement to sell.

In view of the aforesaid undisputed facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

05.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No