

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

**RSA No.1076 of 2016 (O&M)
Date of Decision.02.11.2018**

Jaswant Singh (D) through LRsAppellant
Vs

Shamsher Singh ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gagandeep Singh, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.2936-C of 2016

The application for impleading the legal representatives of deceased-appellant is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the appeal.

RSA No.1076 of 2016

The appellant-defendant has not been successful in defending the suit for specific performance of agreement to sell dated 08.04.2005 in respect of land measuring 15 kanals 9 marlas agreed to be sold for a total sale consideration of ₹10 lacs against the receipt of ₹6 lacs as earnest money.

The plaintiff claimed that both the parties had set the date for execution and registration of the sale deed on 20.12.2005. When the defendant did not come forward, constrained to file the suit on 04.10.2006.

The defendant contested the suit qua maintainability, denied the execution of the agreement to sell and stated that suit for

partition was pending, therefore, there was no occasion for entering into agreement to sell. Readiness and willingness of was also missing.

On the preponderance of evidence, the trial Court decreed the suit and the appeal laid before the lower Appellate Court was also not successful.

Learned counsel appearing on behalf of the appellant-defendant submitted that the respondent-plaintiff, who was a signatory to the agreement to sell ought to have known what transpired at the time of execution of the agreement to sell, as in the cross-examination he was not aware as to whether the vendor Jaswant Singh (since deceased) had appended thumb impression or signatures. Even the source of money had not been proved, therefore, onus for discretionary relief remained undischarged.

I am afraid aforementioned argument of learned counsel for the appellant is not sustainable, for, the agreement to sell has been proved through the attesting witness PW1 Gurpal Singh, who acknowledged that the agreement to sell was thumb marked by the defendant. Pendency of partition proceedings is not sufficient for denying discretionary relief as status of the plaintiff would be of a co-sharer. Thumb impression on the agreement to sell has also not been disputed. It is common practice amongst the legal representatives to dispute the alleged act done on behalf of their predecessor.

All these factors weighed in the mind of the Courts below while decreeing the suit. I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts

below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

The application for condonation of delay is also dismissed.

(AMIT RAWAL)
JUDGE

November 02, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No