

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

**RSA No.1398 of 2016 (O&M)
Date of Decision.02.11.2018**

Hardeep Singh and others

....Appellants

Vs

Surjit Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Kumar Khubbar, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

The appellants-defendants have not been successful in defending the suit for specific performance of registered agreement to sell dated 15.06.2006 in respect of land measuring 10 kanals 1 marla for a total sale consideration of Rs.6,28,125/- against receipt of Rs.3 lacs as earnest money. As per the averments in the plaint, the date for execution and registration of the sale deed was fixed as 11.06.2007. The plaintiff sent a legal notice dated 23.06.2007 but when did not get any positive response, filed the civil suit in the year 2007.

The defendants admitted that he had entered into agreement to sell but it was for the purpose of registration of the mortgage deed. Plaintiff was none else but relative of a commission agent to whom the agriculture produce was being sold. The factum of relationship had been proved through the testimony of accountant of the plaintiff. The plea of hardship was also raised as there is no other land than the one referred to in the agreement to sell but the Courts below have not acceded to the same. Plaintiff was not ready and willing to perform his part of the agreement to sell, thus, urges this

Court for setting aside the concurrent finding of fact.

I am afraid the aforementioned argument is not sustainable, for, issue of hardship was never pressed . For the sake of brevity, issues framed are extracted herein below:-

“1. Whether defendants vide agreement dated 15.6.2006 agreed to sell the land detailed and described in para no.1 of the plaint to the plaintiff for a total sale consideration of Rs.6,28,125/- (Rs. Six lacs twenty eight thousand one hundred twenty five) and actually received Rs.3,00,000/- (Rs. Three lacs) as earnest money? OPP

2. Whether the defendants have failed to abide by the terms and conditions of the agreement dated 15.6.2006? OPP

3. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP

4. Whether suit is not maintainable in the present form? OPD

5. Whether the plaintiff has suppressed the material facts before this Court, if so, its effect? OPD.

6. Whether the plaintiff has no locus-standi to file this suit? OPD

7. Relief.”

It is registered document proved through testimony of PW1 Bharat Bhushan Goyal, deed writer and PW2 Kanwar Pal, Reader to Sub Registrar, PW3 Harinder Kumar, Registry Clerk. The

defendants have not examined expert to explain circumstances as narrated in the written statement. The endorsement on the agreement also reveals that the parties had intended to enter into agreement to sell. The plea of mortgage deed could have some substance, had the agreement to sell was not registered. Relationship of the plaintiff with the commission agent would in such circumstances be immaterial. Readiness and willingness is also reflected from the sequence of facts narrated above. It is settled law that the person, who has denied the execution of agreement to sell, cannot take the plea of readiness and willingness.

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.

(AMIT RAWAL)
JUDGE

November 02, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No