

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

**RSA No.1538 of 2016
Date of Decision.11.05.2018**

Attar Singh

.....Appellant

Vs

Labh Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking specific performance of the agreement to sell dated 6.3.2000 extended on 3.3.2003 upto 05.03.2004 and then extended on 4.3.2004 to 4.8.2004 in respect of land measuring 12 bighas 3 biswas situated within the revenue estate of village Barana, Tehsil Dera Bassi, District Patiala and for specific relief of declaration challenging the sale deed executed by defendant No.2 in favour of defendant No.1 to be illegal, null and void and without consideration with consequential relief of permanent injunction restraining defendant No.1 from selling, alienating, transferring or encumbering the land measuring 8 bighas 3 biswas has been dismissed and affirmed by the lower Appellate Court.

The suit was based on the aforementioned agreement to sell and in respect of the aforementioned agreement to sell, the plaintiff examined two attesting witnesses namely Gurdeep Singh, PW2 being marginal witness and Raman Sharma as PW7 as well as on extension also.

Defendant Nos.1 to 7 were ex parte whereas defendant No.8, the subsequent vendee, who had purchased the property from defendant No.1 during the pendency of the suit contested the suit and took all the pleas which defendant No.1 could have taken.

Both the Courts below did not grant discretionary relief, much less, alternative, for, the plaintiff failed to prove on record the original agreement to sell. Even the application for secondary evidence on the pre-conditions of existence and loss had not been moved.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that the statement of aforementioned two witnesses was sufficient for the Court to believe existence of the document vis-à-vis the loss no evidence has been brought on record. Therefore, one of the pre-requisites of provisions of Section 65 of the Indian Evidence Act has been fulfilled.

I am afraid that the aforementioned argument has not been able to cut ice to bring the case within the realm of illegality and perversity enabling this Court to give a different opinion than one already arrived at, for, the best possible evidence i.e. stamp vendor from whom the actual stamps for execution of the agreement to sell had been purchased, has been withheld. He could have adduced evidence to prove that the actually the stamp papers were purchased by the seller for entering into the agreement. Even onus as per Section 101 of the Indian Evidence Act has not been discharged.

Mr. Harsh Aggarwal also contended that sale deed executed by defendant No.2 was only in respect of 8 bighas and 3 biswas whereas the agreement to sell with the plaintiff was for 12

bighas 3 biswas, therefore, the Courts below at least could have moulded the relief vis-à-vis the remaining extent of land.

Even that relief cannot also be granted in the absence of proof of original agreement to sell.

In view of the aforementioned, the I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No