

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

RSA No.1767 of 2016 (O&M)

Date of decision:15.11.2018

Jaswinder Singh

... Appellant

Vs.

Amar Singh (now deceased) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Divanshu Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff instead of seeking relief of specific performance of the agreement to sell dated 29.12.1992 and 16.06.1994 executed for purchase of Shed no.19, Industrial Area, Phase-II, Ram Darbar, U.T.Chandigarh, has not been successful in claiming declaration and permanent injunction solely on the ground that suit was not maintainable.

Before the Lower Appellate Court, even an application under Order 23 Rule 1 of Code of Civil Procedure for withdrawal of the suit with permission to file fresh one on the same cause of action was dismissed vide order dated 14.09.2015. That order had been challenged by invoking the provisions of Order 43 Rule 1-A of Code of Civil Procedure.

It is a matter of record that during the pendency of application under Order 23 Rule 1 CPC, on the legal advice, plaintiff chose to file a suit

for specific performance. An application under Order 7 Rule 11 CPC moved on behalf of the vendee, was dismissed. However, in revision petition bearing No.5810 of 2016 titled as “Gurpreet Singh and others vs. Jaswinder Singh and others”, this Court vide order dated 07.09.2016 while issuing notice of motion had stayed further proceedings. It has been informed that aforementioned petition is slated for 08.02.2019.

It is also matter of record that since the status of the appellant-plaintiff prior to the execution of the agreement to sell, aforementioned, was that of a tenant and eviction order in the rent proceedings had already been passed and against that CR No.5007 of 2016 is pending adjudication.

The request of learned counsel for the appellant to club the aforementioned revision petitions would not be necessary to be adhered as those are the independent proceedings. Specific Relief Act is a separate Code, where in case of breach on behalf of either of the vendor or vendee, the parties are at liberty to seek invocation of the right provided therein. There is not only one hurdle but many which the appellant-plaintiff has to face. The simpliciter suit for declaration and permanent injunction necessarily has to be dismissed.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No