

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

RSA No.2136 of 2016 (O&M)

Date of Decision.29.11.2018

Dile Ram (since deceased) through LRs & othersAppellants

Vs

Mohinder Singh (since deceased) through LRs & others .Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Partap Singh, Advocate
for the appellant.

Mr. Sanjiv Gupta, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

This regular second appeal at the instance of the appellants-defendants is directed against the judgment and decree dated 30.01.2016 passed by the Additional District Judge, Karnal whereby the suit of the respondent-plaintiff claiming specific performance of agreement to sell dated 26.03.2004 dismissed by the trial court, has been decreed.

Plaintiffs instituted the suit on 16.02.2006 claiming specific agreement to sell dated 26.3.2004 in respect of land measuring 35 kanals 19 malras agreed to be sold @ ₹2.50 lakhs per acre against the payment of ₹6,25,000/- as earnest money. The aforementioned agreement was witnessed by two attesting witnesses Ranbir and Mahavir, scribed by deed writer PW4 and notarized by PW5 Lalit Chopra, Notary. The stipulated date for execution and registration of the sale deed was 31.12.2004. It was stated that on the

said date, defendant and his sons torn the document of agreement to sell and in this regard, FIR was lodged which ultimately led to their conviction under Sections 420, 477, 506 and 120-B IPC, Ex.P4. Concededly both the accused have since expired. The trial Court rejected the plea by holding that plaintiffs have not been able to prove transaction of ₹6,25,000/- and declined the discretionary relief. However, the lower Appellate Court reversed the aforementioned finding of the trial Court and decreed the suit.

Mr. Keshav Partap Singh, learned counsel appearing on behalf of the appellants in support of memorandum of appeal raised the following submissions:-

(i) Parties had not entered into transaction of agreement to sell but it was meant for loan. Respondents-plaintiffs had not established that both the parties had intended to sell and purchase the land in dispute. One of the attesting witness has not been examined. Mahavir, PW1 and deed writer PW4 were not consistent in the cross-examination. Plaintiffs had not stepped into the witness box.

(ii) Defendants were served with legal notice dated 07.12.2005 to appear within one month before the Sub Registrar but the plaintiff has not established on record his presence on 07.01.2006, therefore, readiness and willingness was conspicuously absent.

(iii) PW5 Lalit Chopra in cross-examination spilled the beans and created doubt with regard to entry in the

register.

(iv) In order to establish that the plaintiff did not have sufficient funds or not withdrawn the alleged amount, DW5 Accountant of the firm was examined. He had brought the record of the ledger w.e.f. 01.04.2004 to 2006.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the appellant. PW1 son of plaintiff denied that Jaswant son of defendant ever sold agricultural produce but the aforementioned statement has not been belied by the statement of DW2 and DW4. Cross-examination of DW4 had proved to be a backlash as the factum of withdrawal of ₹6,25,000/- has been proved. One line here and there in the cross-examination of Notary would not help the appellants-defendants, for, Ex.PW5/A register brought on record reflected that against entry at Sr. No.433, the factum of notarization of the agreement dated 26.03.2004 and the payment of earnest money. Despite extensive cross-examination, nothing contrary surfaced in the cross-examination of these witnesses.

As regards the contention of readiness and willingness, the same continued as receipt of registered legal notice dated 07.12.2005 has not been denied and the suit was filed on 16.02.2006 i.e. after expiry of period prescribed in the said notice. Selling of the crop and documentary evidence qua transaction, much less, marriage of the daughter has not been proved on record. This is a common practice amongst the defendant-vendor to take such pleas for denying

agreement to sell. Another point which escaped the notice of the Courts is that original agreement to sell was torn on the target date i.e. 31.12.2004, that itself was a clincher to grant the discretionary relief.

The lower Appellate Court being the last court of fact and law examined all these factors, therefore, said finding cannot be said to be suffering from illegality and perversity. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 29, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No