

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

RSA No.2184 of 2016 (O&M)

Date of decision : 13.08.2018

Harchand Singh (deceased) through his LRs

...Appellant

Versus

Vijay Gopal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit for specific performance of the agreement to sell dated 28.08.1999 allegedly executed by Krishan Gopal in favour of the plaintiff.

It may be noted that Krishan Gopal died on 28.06.2001 whereas suit for specific performance was filed on 24.11.2001. Defendant Nos.1 and 2, children of Krishan Gopal did not choose to contest. However, defendant No.3 contested the suit.

Learned trial Court, on appreciation of the evidence, found that the plaintiff does not know the exact details of the property that whether the property is single storey or double storey. The trial Court further found that the proper parties have not been impleaded, thus, the trial Court dismissed the suit. The first appeal preferred by the plaintiff-appellant was also dismissed after recording a finding that the exact description of the property which was agreed to be sold is missing from the agreement to sell. Still

further, the Appellate Court has found that Krishan Gopal was not exclusive owner of the property.

Learned counsel appearing for the appellant, submitted that at the most assuming the findings of the Courts to be correct, decree could be granted with regard to 1/3rd share of the property as Krishan Gopal and his two sisters were owners,.

This Court has considered the submissions. However, find no substance. The Appellate Court has dealt with the aforesaid issue and found that the property is one unit consisting of residential house and certain commercial shops and as such, a decree for 1/3rd share of the property cannot be granted. The Courts have further found that very nature of the document i.e. the agreement to sell is doubtful.

Both the Courts below have discussed the evidence and after appreciating the same, returned a finding. Although, learned counsel for the appellant made a sincere attempt, however, could not point out any substantive mis-reading or non-reading of the evidence.

In such circumstances, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No