

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

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**RSA-2225-2016 (O&M)
Date of Decision : 27.08.2018**

Yatender Kumar Walia (deceased) Through His LRs.

..... Appellants

Versus

Paramjit Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Akshay Kumar Goel, Advocate
for the appellants.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit for specific performance filed by the appellants.

The case of the appellants was that they had entered into an agreement dated 14.07.2004 to purchase the property in dispute from the respondent No.1. The target date was fixed as 14.10.2004. It was further the case of the appellants that there was a stipulation in the document of title in favour of respondent No.1 as per which he could not transfer the property in dispute without obtaining the NOC from the Army Welfare Housing Organization, New Delhi (AWHO). On the target date, the appellants approached the respondent No.1 with the balance consideration but the respondent No.1 put off the matter by saying that he

did not yet obtained the permission and the sale deed would be executed after he obtained the NOC. The further case of the appellants was that on 22.07.2005 the respondent No.1 got issued an illegal notice to the appellants terminating the agreement to sell and thereafter he executed a full payment receipt, general power of attorney and a will in favour of the respondent No.2 in respect of the property in dispute on 24.10.2005. It was in these circumstances that the appellants prayed for specific performance of the agreement to sell. Both the courts below held that the appellants had not led any evidence to prove that they were in possession of the requisite sale consideration on 14th October, 2004 (the target date) and consequently dismissed the suit.

Before me also, the counsel has not been able to show any evidence which the appellants may have led to prove that they were in possession of the requisite funds on 14.10.2004. In the circumstances, no fault can be found with the judgments of the courts below dismissing a suit of the appellants for specific performance.

Another argument raised by the counsel is that the documents executed by the respondent No.1 in favour of respondent No.2 (GPA, full payments receipt and Will) cannot be treated to be a transfer of property and the courts below have wrongly construed these documents to be the documents of transfer of property. In my opinion, even if this argument is correct yet once the suit of the appellants was to be dismissed on account of inherent weakness in it, there would be no occasion to give any finding on the contract between the respondents.

With these observations, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 27, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No