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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-495-2013 (O&M)

Date of decision : 18.01.2018

Dalbir Singh

... Appellant(s)

Versus

Pritam Chand

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellant(s).

Mr. Ashok Kumar Khubber, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 06.06.2005 (Ex.P-6) has been decreed by exercising the discretion under Section 20 of the Specific Relief Act.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellant-defendant submits that the respondent-plaintiff instituted the suit seeking specific performance of the aforementioned agreement to sell, which was not signed by the plaintiff and the defendant was not the owner of the entire piece of land measuring 36 kanals 17 marals being 737/6684 shares out of total land measuring 334 kanals 4 marals compromised in khewat No.177 Khatoni No.254, 255 and 256, total kittas-49, situated in Village Barwa, Tehsil Thanesar, District Kurukshetra as per the jamabandi for the year 2000-01. The witnesses, namely, Ram Pal s/o Jai Ram and Khushi Ram son of Bishan Lal did not prove the execution of the agreement as the other owners also did not append their signatures, therefore, it was

not an agreement, but a loan transaction. The target date as per the agreement to sell was 30.11.2005. Before that the respondent-plaintiff sent the legal notice which was duly replied, wherein it was candidly stated that it was a loan transaction as they were known to each other, but the Courts below have erroneously exercised the discretion. The categorical stand was that the blank papers bearing the signatures of the appellant-defendant had been misused as agreement to sell, though they were meant for obtaining the loan. It is a hard case that the trial Court at the best could have ordered for recovery of the earnest money, thus, urges this Court for setting aside the findings by formulating the substantial questions of law as drawn in the memorandum of appeal.

Mr. Ashok Kumar, learned counsel appearing on behalf of the respondent submits that in pursuance to the judgment and decree, even the sale deed of the suit land has been executed as the possession was already with the respondent-plaintiff. The decree is only with regard to the share of the appellant-defendant and not entire property by applying the *doctrine akin* of severability. The appellant-defendant had candidly admitted the signatures on the agreement in the cross-examination. The readiness and willingness, much less, performance of the agreement sell has duly been proved. The testimony of the attesting witnesses has gone unsheltered, thus, urges this Court for upholding the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book as well as seen the record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mamli, for, the appellant-defendant when appeared as DW-1 in cross-examination admitted his signatures on both the pages of the agreement, even feigned

ignorance with regard to the reply to the legal notice. No sane person would remain silent in case somebody misuses the paper, rather would make all efforts to pursue with legal remedy by lodging an FIR or complaint to the police, but for reasons best known, no such action has been taken. The ownership of the land qua defendant share had not been denied. This is what the Courts below after noticing the record granted the discretionary relief viz-a-viz his share. Both the witnesses, namely, Ram Pal s/o Jai Ram and Khushi Ram son of Bishan Pal have proved the execution of the agreement and also the payment of earnest money of ₹3 Lacs. The defendant also admitted in cross-examination that he was matriculate and used to append his signatures. The plaintiff remained present in the office of the Registrar on 30.11.2005 i.e. target date and the suit was filed on 07.02.2006. The readiness and willingness as per the provisions of Section 16(c) of the Specific Relief Act has also been proved to the hilt. No evidence has been led to belie the signatures and circumstances, under which, the blank papers had been misused, much less, receipt of earnest money of ₹3 Lacs.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Accordingly, the appeal is dismissed.

18.01.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes**

Whether Reportable **No**