

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

RSA No.3217 of 2016 (O&M)

Date of decision:01.11.2018

Rajbir Singh

... Appellant

Vs.

Gurjant Singh (since deceased) through LR's and another... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL J. (Oral)

C.M.No.8601-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 55 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.3217 of 2016 (O&M)

The appellant-plaintiff has not been successful claiming the relief of specific performance of oral agreement dated 26.10.2004 and permanent injunction.

As per the facts culled out in the plaint, vide sale deed dated 04.11.2004, the plaintiff had sold the land measuring 20 kanals to the defendants on receipt of sum of ₹4,75,000/-, though the sale deed was prepared on 02.11.2004 with an understanding that same would be re-sold

to the plaintiff, after some time, as he was in need of money with an additional amount of ₹62,500/-. In this regard, defendants executed an affidavit dated 02.11.2004. On repeated requests, defendants did not pay any heed which compelled the plaintiff to file the suit in November, 2006. The trial Court dismissed the suit and the Lower Appellate Court in appeal also upheld the findings of the trial Court.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that though affidavit was denied in the written statement but the signatures of the defendants had been proved through the testimony of an expert and Notary Public from whom the same was attested. Despite that, the Court below did not grant the discretionary relief. The readiness and willingness on behalf of the plaintiff for paying the additional amount of ₹62,500/- had also been proved on record. Leela Ram witness to the oral agreement was not examined, therefore, there is gross illegality and perversity in the findings under challenge.

I am afraid the aforementioned arguments are not sustainable, for, Balvir Singh, Nambardar, witness of the affidavit, would have been the clincher for adjudication of the lis, has been withheld from the Court. It is strange that a person who had sold the land had agreed to re-purchase the same with an additional amount of ₹62,500/-. Assuming that plaintiff was in need of money, he could have mortgaged the land but not in the manner and mode as noticed above.

In my view, the plaintiff has failed to prove the existence of oral agreement dated 26.10.2004, therefore, rightly denied the discretionary relief. The concurrent findings of facts and law based upon the appreciation of oral and documentary evidence do not call for any interference.

No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 01, 2018
savita

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