

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3270 of 2016
Date of decision : November 15, 2018

Satish Kumar

..... Appellant

Versus

Sarabjit Kaur (deceased) through her L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H. K. Aurora, Advocate
for the appellant.

AMIT RAWAL, J (oral).

The appellant-plaintiff has not been able to seek specific performance of the agreement to sell dated 23.2.2005 in respect of land measuring 28 Kanals 15 ½ Marlas being half share of 57 Kanals 11 Marlas. It was alleged that as per the agreement to sell two sale deeds were executed one for ½ share dated 30.4.2005 and second on 23.2.2006. The entire sale consideration was ₹13,85,000/-. A sum of ₹3 lacs was paid as earnest money jointly by plaintiff and defendant No.2. It has been alleged that during the period of agreement to sell defendant No.1 had entered into two sale deeds one with defendant No.2 Gulzar Singh one of the vendees and another in favour of defendant No.3 Kuldeep Kaur. Accordingly the suit was filed on 4.8.2006.

Learned counsel for the appellant submitted that there is clear cut recital in the sale deed regarding half share of 57 Kanals 11 Marlas which was required to be executed in favour of defendant No.1 and the remaining half to the other vendee, but yet the courts below have failed to

the judgments and decrees of the courts below.

I have heard learned counsel for the appellant and appraised the paper book.

The amount of ₹3 lac was paid on behalf of the plaintiff as well as defendant No.2. Earnest money of ₹1.5 lac/- was required to be considered towards half share. I am afraid that the aforementioned argument of the learned counsel for the appellant is not sustainable, for the contents of the agreement to sell, shown to this Court during the course of hearing, reveal that as per clause, the sale deed can be executed in favour of any person as per the Will. The remedy of the plaintiff was not to seek specific performance of the agreement to sell but refund of the amount of earnest money, in case he had parted along with the co-vendee.

In view of the aforementioned, the concurrent finding of fact arrived at by both the Courts below do not call for interference. The argument of learned counsel for the appellant has not been able to cut ice to bring the finding of the Courts below within the realm of illegality and perversity. No ground for interference is made out. The second appeal stands dismissed on the ground of delay and as well as on merits.

(AMIT RAWAL)
JUDGE

November 15, 2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No