

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

RSA No.4163 of 2016 (O&M)

Date of Decision.10.05.2018

Pawan Kumar

...Appellant

Vs

Vijay Kumar (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking specific performance of agreement to sell dated 02.12.2006 in respect of land in dispute area i.e. 9/10 share @ ₹1,20,000/- per acre against the payment of earnest money of ₹60,49,935/- and 1/10 share against the earnest money of ₹2,72,215/-. The stipulated date for execution and registration of the sale deed was 30.05.2007. The plaintiff is stated to have sent a registered notice dated 21.12.2007 to appear before the Registrar on 11.01.2008 but the defendant did not appear. It was alleged in the plaint that original agreement to sell had been lost.

The aforementioned suit was contested by the defendant by denying the execution of the agreement to sell. It was stated that actually Anil Kumar obtained signatures on the blank paper as the vendor Vijay Kumar had a weak eye-sight. It was actually a loan transaction as the defendant became owner of the property vide sale deed dated 05.08.2005 and therefore, could not enter into the agreement

to sell.

On the basis of pleadings, the trial Court framed as many as six issues.

The plaintiff in support the averments made in the plaint examined as may as 10 witnesses and brought on record Ex.P1 to P11 i.e. photocopy of agreement to sell dated 02.12.2006, affidavits, jamabandies, mutation, endorsement of stamp vendor, postal receipts and return cover of legal notice.

On the other defendant examined one witness Sohan Lal as DW1 and closed the evidence.

The trial Court on the basis of the evidence, particularly, relying upon the statement of PW8, Anoop Kumar, Registration Clerk found that there was no record of the entries Ex.P3 to P5. In view of the aforementioned fact, the Courts below had no other option but to dismiss the suit. The appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Akshay Bhan, Ld. Senior Counsel assisted by Mr. Santosh Sharma appearing for the appellant-plaintiff submitted that the story coined by the respondent-defendant with regard to alleged cancellation of agreement to sell is neither here nor there, for, the original agreement to sell had been lost and therefore, could not be brought on by taking advantage of the aforementioned fact and coining the aforementioned story. The impugned judgments and decrees are not sustainable as both the courts below failed to appreciate that the appellant-plaintiff was always ready and willing to perform his part of the agreement. The judgments and decrees are based on conjectures and surmises as both the Courts below failed to discharge the onus by

not determining the points of determination as per the provisions of Order 41 Rule 31 CPC, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bhan, for, the appellant-plaintiff has miserably failed to prove as to when the agreement to sell was lost, for, the original agreement has not seen light of the day nor any application for secondary evidence was moved. During the course of hearing, this Court called upon the counsel to show photocopy of the agreement. On bare look upon the agreement to sell, it surfaced that in the bold letters it was written as cancelled. If at all, there was original agreement entered into, the plaintiff would have challenged its cancellation. Therefore, the suit was not maintainable.

All these factors weighed in the mind of the courts below while declining the discretionary relief as well as the alternative. The argument of Mr. Bhan has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of arises for determination by this Court. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 10, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No