

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

RSA No.4503 of 2016 (O&M)

Date of decision:13.11.2018

Amar Singh and others

... Appellants

Vs.

Jawahar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Dhiman, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants have not been successful in defending the suit which was decreed for recovery of ₹12 lakhs along with interest @ 8% per annum from the date of registration of the sale deed till realization of the decreetal amount.

The plaintiffs claimed the aforementioned amount on the premise that defendants no.1 to 4 had taken responsibility to produce defendant no.5 at the time of execution and registration of the sale deed in view of the agreement to sell dated 03.03.2006 agreed to be sold for a total sale consideration of ₹1,05,29,375/- but defendants No.1 to 4 secretly sold away the land to some third party, vide sale deed dated 08.05.2006, and therefore, cause of action accrued for recovery of earnest money alongwith interest amounting to ₹13,98,000/-.

The appellant-defendants opposed the suit qua maintainability

being barred under Order 2 Rule 2 of Code of Civil Procedure. It was alleged that agreement to sell had become un-executable as the plaintiffs did not approach the Registrar on the target date, resulting into forfeiture of earnest money.

On the basis of pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to recover ₹ 12,00,000/- from the defendants as prayed for? OPP*
- 2. If issue no.1, is proved, whether the plaintiffs are entitled to claim interest if so at what rate?OPP*
- 3. Whether the suit is barred under Order 11 Rule 2 CPC?OPD*
- 4. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 5. Whether plaintiffs have estopped from filing the present suit by their own act, conducts, admissions, commissions from filing the present suit?OPD*
- 6. Relief.”*

The trial Court by rejecting the plea of defendants decreed the suit and appeal laid down before the Lower Appellate Court has also been dismissed.

Learned counsel appearing on behalf of the appellant-defendants submitted that despite the fact that issue no.3 was framed, the

trial Court non-suited the appellants of having not pressed the issue without noticing the fact that preliminary objection in this regard was taken, for, the plaintiffs instead of filing the suit for recovery, had filed the suit for injunction on 13.05.2006 which was dismissed in default.

I am afraid the aforementioned argument is not sustainable, for, the sale deed is dated 08.05.2006, whereas, the injunction suit was filed on 13.05.2006. The plaintiffs realized that it was a futile exercise to seek discretionary relief, therefore, provisions of Order 2 Rule 2 of Code of Civil Procedure, would not apply. Even otherwise, in memorandum of appeal filed before the Lower Appellate Court, no such ground has been taken, thus, deemed to have been waived off.

In view of what has been observed above, the findings of facts and law arrived at by both the Courts below cannot be said to be suffering from illegality and perversity.

No ground is made our for interference.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 13, 2018
savita

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