

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

**RSA No.5357 of 2016 (O&M)
Date of decision:16.11.2018**

Dharambir

Vs.

... Appellant

Rameshwar Dayal (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Kumar Yadav, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-defendant has not been successful in defending the suit for specific performance of the agreement to sell dated 30.7.2007 in respect of land measuring 7 kanals agreed to be sold for a sum of ₹2.00 lakhs against the receipt of ₹1,50,000/-. The stipulated date for execution and registration for the sale deed was fixed 30.09.2009.

It was alleged that Hira Lal during his life time, executed release deed dated 15.07.2005 in favour of sons, i.e., defendant and others in which defendant acquired the ownership of 7 kanals 0 marla rakba.

The defendant opposed the suit by denying the execution of the agreement to sell instead alleged that it was a loan transaction fraudulently converted into agreement to sell.

In order to prove the execution of the agreement to sell, the plaintiff besides appeared himself as PW1, examined PW2-Ashok Kumar,

witness to the agreement to sell, PW3-Ramphal-Scribe, PW4-R.S.Sharma, Advocate attesting witness of the agreement to sell and PW5-Kuldeep Singh Yadav, Advocate, qua legal notice Ex.PW5/A. The defendant did not place on record any documentary evidence except bald statement.

Mr.Sandeep Kumar Yadav, learned counsel appearing on behalf of the appellant submitted that judgments and decrees of the Courts below suffer from illegality and perversity as witnesses of the agreement to sell were not coherent and consistent. The testimony of PW3-Ramphal was doubtful as he could not prove his presence at the time of execution of the agreement to sell. The agreement to sell was not only for the land but also for tubewell, pumping set, motor, pipe water tank etc which could not be sold for a paltry amount of ₹2.00 lakhs.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, the appellant-defendant has failed to discharge the onus with regard to loan transaction. Actually, no evidence qua repayment of the loan has been led. On the other hand, all the witnesses, much less scribe and lawyer have been coherent and consistent not only with regard to execution of the agreement to sell but payment of earnest money. In such circumstances, the discretionary relief granted under Section 20 of the Specific Relief Act, 1963 in a suit filed promptly, cannot be found to be faulted with.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based

upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

November 16, 2018

savita

(AMIT RAWAL)
JUDGE

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