

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

**RSA No. 580 of 2016 (O&M)
Date of Decision:-May 7, 2018**

Harpreet Kaur

.....Appellant

V/S

Piara Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Pankaj Jain, Advocate
for the appellant.

Mr. Gulzar Mohd. Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendant is in the regular second appeal against the concurrent finding of fact whereby the suit seeking specific performance of agreement to sell dated 28.10.2006 has been decreed by the trial court and affirmed by the lower appellate court.

The suit was filed by the respondent-plaintiff seeking specific performance of Agreement dated 28.10.2006 in respect of land measuring 10 bighas, 10 Biswasi agreed to be sold for a total sale consideration of Rs.20 lacs. The stipulated date for registration and execution of the sale deed was 15.06.2007. According to the averments in the plaint, the respondent-defendant did not come forward for performance of the agreement on the stipulated date giving a cause of action to file the suit on 16.11.2007. It was alleged that the possession was handed over, for, against the sale consideration of Rs. 20 lacs, a sum of Rs. 18 lacs was paid. The alleged

Agreement was signed in the presence of two attesting witnesses and written by Deed Writer Ram Parkash.

The defendants in the written statement denied the execution of the Agreement, much less, signatures on it and came out with the plea that the agreement to sell was forged and fabricated as it was never signed. The trial court on the preponderance of the evidence decreed the suit and which has been affirmed by the lower appellate court.

Mr. Pankaj Jain, learned counsel appearing on behalf of the appellant-defendant submitted that the judgment decree of the lower appellate court is bereft of the reasoning for it did not advert to the cross-examination of the plaintiff as could not produce on record any document with regard to the payment of earnest money of Rs.18 lacs, for, he came out with plea that had taken a loan Rs.20 lacs but did not pay interest thereon. Such part of the evidence did not comply with the requirement of the law as envisaged under Section 16(C) of the Specific Relief Act 1963, Act, for, the trial court while noticing the khasra girdawaris Ex. D2, Ex. D3 and Ex. D4 found that possession of the property was with defendant. Once the plaintiff was found to be telling lie on the point of possession, the statement vis-a-vis the payment of the earnest money was also liable to be rejected. In support such contention, reliance has been laid upon the judgment rendered by ***LOURDU MARI DAVID VS. LOUIS CHINNAYA AROGIASWAMY, 1996 AIR SC 2814***. Per contra, Ld. Counsel for the respondent-plaintiff submit that Balwant Rai PW-2 had proved execution of the agreement, much less, advancement of the amount of Rs. 18 lacs. The possession in the record continued to be in the name of defendant, for, it was not sought to be corrected and physical had been with plaintiff. PW3 Ram Parkash, Deed

Writer also stated in the same term of PW2.

I have heard the learned counsel for the parties and gone through the paper book and of the view that there is no force and merit in the submission of Mr. Pankaj Jain for PW 2 Balwant Rai proved the payment of the earnest money of Rs.18 lacs, to the defendant in his presence, much less, the execution of the agreement i.e. appendation of the signatures on the Agreement to Sell. It was obligatory on the part of the defendant to belie his signature by taking the aid of an expert. Having failed to do so, irresistible conclusion is liable to be drawn that he was afraid that truth may not surface. No sane person with such a plea in the court of law would sit idle, but rather run from pillar to post to launch appropriate criminal proceedings, if there was some truthfulness in the alleged grievance. It is a common practice amongst vendors to wriggle out of the agreement for many reasons like change in the market price or on account of greed. PW3 Ram Parkash, Deed Writer also reiterated the version as given by the PW2, much less, by the plaintiff regarding the execution of the Agreement to Sell and signature of the appellant/defendant. The defendant failed to examine any witness in support of the averment in the plaint that he did not append signature or received the earnest money of Rs. 18 lacs. Regarding the possession, the Court just gave the finding on the basis of examination of khasra girdawari Exhibit D2 to D4. Since the matter was pending in the Court, no such application was submitted by the plaintiff for correction of the khasra/girdawari, for, the plaintiff did not claim relief of possession and rather sought the injunction qua creation of third party rights, mortgage, much less, forcible interference and dispossession. There is no dispute to the ratio culled out in judgment referred to (supra) for it was based on the fact of

each case as purchaser was not found to be bona fide. The evidence and facts of each case always differ enabling the court to form an opinion regarding discretionary relief under Section 20 of the Specific Relief Act. With regard to the argument regarding the payment of the earnest money, to a specific question in the cross-examination, the plaintiff admitted that he had reflected the payment of earnest money of Rs. 18 lacs in income tax return but did not ask him to produce the record to draw adverse inference. In the absence of such piece of cross-examination or request rather proved the case of the plaintiff viz a viz the payment of the earnest money. As an upshot of my finding, the argument of Mr. Jain has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this court. No ground for interference is made out. The second appeal is dismissed.

May 7, 2018

Rajeev Purohit

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned Yes

Whether reportable No