

103

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

RSA-4711-2015

Date of decision : 23.01.2018

Kewal Singh

... Appellant(s)

Versus

Rajwinder Kaur @ Bholi (deceased through LRs) and
another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWALPresent: Mr. Karanjit Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit claiming following relief at the instance of the respondent-plaintiff, has been decreed by both the Courts below.

"Suit for specific performance of agreement to sell dated 28.12.2006 by way of execution and registration of sale deed in favour of plaintiffs by receiving balance payment/sale price relating to land measuring 4 kanals bearing Khasra No.8//19 (4-0), khata khatoni No.S121/282, as entered in the jamabandi for the year 2001-02, situated at village Fattewal, Tehsil Ajnala, District Amritsar and in the alternative suit for recovery of ₹2,36,000/- i.e. ₹1,18,000/- as earnest money + ₹1,18,000/- as damages, along with interest at the rate of 18% per annum from the date of agreement to sell till the date of decree and with future interest at the rate of 18% per annum from the date of decree till the date of realization of the actual amount with a further relief of injunction thereby restraining

the defendant from alienating the land by way of sale, mortgage, exchange, lease or in any other manner and also restraining him and his agents from interfering into the peaceful possession of the plaintiffs forcibly, illegally except in due course of law.”

Mr. Karanjit Singh, learned counsel appearing on behalf of the appellant-defendant submits that though the ownership of having 1/3rd share in the suit property was admitted, but the execution of the sale deed was denied as the respondents-plaintiffs had played a fraud upon him and circumstances of playing fraud had categorically been pleaded. The agreement to sell for a total sale consideration of ₹1,20,000/- was dated 28.12.2006 and a sum of ₹ 1,18,000/- had allegedly been paid to the appellant-defendant, whereas the stipulated date for execution was 15.03.2007. It is unbelievable that a sane person would not get the sale deed executed despite having paid almost total sale consideration. It was a clincher to show element of fraud. The plaintiffs did not turn out for cross-examination with regard to the purchase of the stamp paper and therefore, the evidence could not be looked into. All these factors if read in cumulative did not make out case of granting of discretionary relief under Section 20 of the Specific Relief Act, thus, urges this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Karanjit Singh, for, if at all any fraud had been played upon appellant-defendant, nothing prevented him to take an appropriate action by lodging the criminal proceedings against the respondents-plaintiff(s) as no sane person, who actually is defrauded, would sit silent.

The execution of the agreement to sell has been proved through the testimony of the attesting witnesses as the possession of the suit property was also sought, which is evident from the nature of the relief claimed in the suit property. The suit had been filed immediately in the month of May 2007, when the appellant-defendant did not come forward. There is a compliance of Section 68 of the Indian Evidence Act and the provisions of Section 16(c) of the Specific Relief Act. The jamabandi (Ex.P6) also reveals the ownership viz-a-viz the share of the plaintiff(s). No contrary point or document has been referred to enable the Court to form a different opinion than the one arrived at by the Courts below.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below as the same are based upon the preponderance of oral and documentary evidence, much less, no substantial question of law arises for determination. Resultantly, the present regular second appeal is dismissed.

23.01.2018	(AMIT RAWAL)
Yogesh Sharma	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No