

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

RSA No.624 of 2016 (O&M)

Date of decision:29.11.2018

Inderjit Singh

... Appellant

Vs.

Maninder Bir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dhirinder Chopra, Advocate
for the appellant.

Mr. Parminder Pal Singh Thethi, Advocate
for the caveator/respondent(s).

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law, whereby, suit of the plaintiff/respondent no.1 claiming specific performance of the agreement to sell dated 05.05.2003 in respect of suit land agreed to be sold at the rate of ₹2,00,000/- per acre against the receipt of earnest money of ₹2,00,000/- has been decreed by the trial Court and affirmed by the Lower Appellate Court.

Mr. Dhirinder Chopra, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that though the appellant-defendant no.1 was proceeded against ex parte but later on, allowed to join the proceedings and filed the written statement. The stand taken in the written statement was that the agreement to sell was forged and fabricated document at the instance of one Raghbir Singh. The trial Court has not

taken into consideration the testimony of marginal witnesses Rajbalbir Singh-PW3 and Scribe, Atma Singh, PW4 and Harmohinder Singh, PW1, in correct perspective, therefore, the discretionary relief ought not to have been granted.

I am afraid the aforementioned argument is not sustainable, for, the attesting witnesses have not only proved the execution of the agreement to sell but also payment of earnest money. If at all, the agreement to sell was forged and fabricated document, nothing prevented the appellant-defendant no.1 to lead evidence to belie the testimony of attesting witnesses. In the absence of the same, the Courts below had no other option but to grant the discretionary relief as the plaintiff has been able to discharge the onus as per the provisions of Section 101 of Indian Evidence Act.

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 29, 2018

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Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No