

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

**RSA No.660 of 2016 (O&M)
Date of Decision.03.12.2018**

Balwant Singh

...Appellant

Vs

Rajinder Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dheeraj Mahajan, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

The appellant-plaintiff No.1 has not been successful in getting the discretionary relief under Section 20 of the Specific Relief Act, as the suit seeking specific performance of agreement to sell dated 17.12.1997 had been partly decreed granting alternative relief of ₹6,94,812/- along with interest @6% per annum w.e.f. the date of execution of agreement to sell till its realization.

The plaintiffs asserted that defendant No.1 Rajinder Singh, who was proceeded ex parte, entered into agreement aforementioned in respect of land measuring 47 kanals 2 marlas agreed to be sold @₹1,35,000/- per acre. Time was not essence, as the possession was delivered, owing to the relation between the parties, being brothers. Vide legal notice dated 25.10.2007, defendant No.1 was called upon to appear before the Sub Registrar on 08.11.2007 but he did not appear.

The defendants opposed the suit claiming themselves to be in possession of the suit land by virtue of sale deeds Ex.D1 and D6. The first sale deed was allegedly executed on 15.11.2006 by

defendant No.1 in favour of defendants No.2 and 3 for a sum of ₹15,33,000/- and thereafter, there have been various sale deeds in favour of defendants no.4 and 5 and so on and so forth.

Mr. Mahajan, learned counsel appearing on behalf of the appellant submitted that the trial Court while ordering alternative relief gave a finding that agreement to sell was proved. No cross appeal was filed, thus, in such circumstances, decree could not have been confined to alternative relief, as the readiness and willingness has also been proved to the hilt. Non appearance of the attesting witness for cross-examination, in such circumstances, cannot be said to be fatal, as the possession was already with the plaintiff.

I am afraid aforementioned arguments are not sustainable, for, plaintiff miserably failed to prove readiness and willingness in the absence of appearance of the attesting witnesses for cross-examination. Even after expiry of stipulated date i.e. 08.11.2007, the suit was filed after a lapse of one year three months. In such circumstances, readiness and willingness was conspicuously absent. It is the plaintiff who has to stand on his own legs. Except the bald statement of the plaintiff, no witness has been examined regarding ingredients of agreement to sell or readiness and willingness. Once property had already been sold, Courts below had no other option but to order for alternative relief. Prima facie, onus of payment of consideration was not discharged. Be that as it may. Even argument of Mr. Mahajan for damages of ₹5 lakhs in case of non-performance of agreement is not sustainable, as the readiness and willingness has not been proved.

As an upshot of my finding, concurrent finding of fact rendered by the Courts below cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 03, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No