

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

RSA No.6967 of 2016

Date of Decision.15.05.2018

Hardev Kaur and others

.....Appellants

Vs

Des Raj

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naveen Batra, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-defendants are in regular second appeal against the concurrent finding of fact whereby the suit filed by the respondent-plaintiff for specific performance of agreement to sell dated 27.07.2006 has been decreed by calling upon the appellants-defendants to execute and register the sale deed on receipt of the amount of balance sale consideration directed to be deposited within 60 days from the date of decree.

The respondent-plaintiff instituted the suit claiming aforementioned relief on the premise that the appellants-defendants had entered into agreement to sell dated 27.07.2006 in respect of land measuring 4 kanals 16 marlas against the total sale consideration of ₹2,50,000/- per acre and receipt of earnest money of ₹98,000/-. It was averred that for registration and execution of sale deed, the target date was 26.03.2007, which was extended to 26.04.2007 and then to 26.06.2007 and still further to 26.07.2007.

On two occasions, a sum of ₹15,000/- and ₹5000/- over and above

the receipt of earnest money had been paid to the appellants-defendants but the defendant did not appear on the extended date i.e. On 26.07.2007, necessitating the plaintiff to institute the suit.

The defendants contested the execution of the agreement to sell. It was stated that there was a forgery and fabrication of the document as the stamp papers which were signed for obtaining loan as well as security had been used for converting the same into agreement to sell. In fact, the defendants had taken loan of ₹1 lac but the same was returned without any receipt.

Since the parties were at variance, the trial Court framed as many as seven issues including the issue of relief.

The plaintiff in order to prove the execution of the agreement to sell examined the attesting witnesses Jagtar Singh as PW1 and Mangal Pal as PW6. The defendants also examined three witnesses and the Courts below found that readiness and willingness at the instance of the respondent-plaintiff had been proved. The Courts below while noticing the averments made in paragraph 7 and 8 of the plaint and the evidence brought on record, granted the discretionary relief which was also affirmed by the lower Appellate Court.

Mr. Naveen Batra, learned counsel appearing on behalf of the appellants-defendants submitted that it was not a case of granting discretionary relief, for, the appellants-defendants had denied the execution of the agreement to sell as the respondent-plaintiff has not been able to prove the readiness and willingness. In the absence of the same, the discretionary relief could not have been

granted. There had been an inconsistency in the testimony of Jagtar Singh, deed writer but the same has not been meticulously examined, resulting into illegality and perversity. The loan amount had already been paid but since there was a trust amongst the parties, no receipt was taken, thus, urges this Court for setting aside the findings under challenge.

I have heard learned counsel for the appellants and appraised the paper book. It is unfathomable that a person, who has taken loan and returned the money, would not take a receipt. No evidence has been led to belie signatures on the agreement to sell. No sane person would sit silent in case other party has misused the documents signed by him instead of initiating criminal proceedings. On the contrary, execution of the agreement to sell has been proved through the testimony of deed writer Jagtar Singh. There had been two occasions when an amount of ₹15,000/- and ₹5000/- had been received. The respondent-plaintiff in paragraph 7 and 8 pleaded readiness and willingness. For the sake of brevity, para 7 and 8 of the plaint reads as under:-

“7. That the plaintiff always, remained ready and willing and is still ready and willing to perform their part of contract but the defendants are not ready to perform the contract on his part as per terms and conditions of the agreement to sell dated 27.7.2006 and said writing dated 26.03.2007, 26.4.2007 and 26.6.2007.

8. That the plaintiff has asked the defendants many a

times to admit the above lawful claim of the plaintiff and to obey the terms and conditions of the agreement to sell dated 27.7.2006 and writing dated 26.3.2007, 26.4.2007 and 26.6.2007 and also to execute and register the sale deed of the suit land in favour of the plaintiff but after evasive reply yesterday the defendants have finally refused to admit the above said lawful claim of the plaintiff, hence this suit.”

However, the contents of para 7 and 8 of the plaint were vaguely denied in the written statement.

As an upshot of my finding, I am of the view that the judgments and decrees rendered by the Courts below do not call for interference as the same are based upon correct appreciation of fact and law, 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.

(AMIT RAWAL)
JUDGE

May 15, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No