

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA No.6970 of 2016 (O&M)

Date of decision: 20.04.2018

Ashat Singh

..... Appellant

Versus

Ishwar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Brijender Kaushik, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-18055-C-2016

Delay in re-filing the appeal is condoned and the application is allowed.

CM-18056-C-2016

Allowed, as prayed for.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below dismissing the suit for specific performance of the agreement to sell dated 08.02.2006. Both the Courts have recorded that since on the target date, the sale deed was not executed and registered, therefore, the defendants terminated the agreement by notice dated 10.06.2006 Ex.D-6 on the file. It is admitted position on the record that termination of the agreement to sell was not challenged by the plaintiff in the suit. Hon'ble Supreme Court in the

judgment 2014(1) CCC, 439 titled I.S. Sikandar (d) by LRs Vs. K. Subramani and others has clearly held that unless the plaintiff in a suit for specific performance of the agreement to sell challenges the termination of the agreement to sell, he cannot succeed in suit for specific performance.

Still further, it is not disputed that as per the agreement to sell, the target date for execution and registration of the sale deed was 08.06.2006. Plaintiff filed a suit for injunction after cause of action for filing a suit for possession by way of specific performance had accrued on 05.09.2006. The Courts have further found that in view of the aforesaid fact, the present suit is barred under Order 2 Rule 2, CPC. Learned counsel for the appellant during the course of argument has admitted that while withdrawing the injunction suit, no permission of the Court was sought for filing a suit for specific performance.

In view thereof, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

20.04.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No