

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

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RSA No.6972 of 2016 (O & M)
Date of Decision:17.07.2018

Mahinder Singh

...Appellant

Versus

Balbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit for possession by way of specific performance of the agreement to sell with a consequential relief of permanent injunction.

Plaintiff pleads that there was an agreement to sell between the parties on 08.10.1998 for a total sum of Rs.3,25,315/- out of which Rs.2,85,315/- was paid as earnest money.

It is not in dispute that the defendant was owner in possession of land measuring 34 kanals and 14 marlas, which he had mortgaged with the plaintiff and his brother vide registered mortgage deed dated 06.07.1972. Thereafter, the defendant sold land measuring 17 kanals and 7 marlas to the plaintiff.

It is the case of the plaintiff that a fresh mortgage deed was executed on 14.02.1995. Plaintiff filed a suit for declaration claiming that he

has become owner of the property by lapse of time as mortgage has not been redeemed. Agreement to sell as propounded in the present suit was not disclosed in the aforesaid suit.

Still further, the defendant filed an application for redemption of the mortgage, which was allowed on 16.04.2008. It is thereafter the plaintiff filed the present suit for possession by way of specific performance.

Both the Courts have further noticed that two marginal witnesses of the alleged agreement to sell have given contradictory evidence. Evidence of the attesting witnesses is not inconsonance with each other, one witness has stated that the agreement to sell was scribed at Nilokheri whereas other witness has stated that it was scribed at Karnal.

In view of the aforesaid findings, this Court does not find any good ground to interfere.

Regular second appeal is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

17.07.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No