

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

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**CM-10953-C-2018 in/and
RSA-787-2016 (O&M)
Date of Decision : 02.08.2018**

Raghubir Singh

..... Appellant

Versus

Rishi Pal

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.S. Dinarpur, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (ORAL)

CM-10953-C-2018

For the reasons recorded, the application is allowed.

Document Annexure A-1(Colly) is taken on record.

RSA-787-2016 (O&M)

This appeal has been filed against the judgments of the courts below decreeing a suit for specific performance filed by the respondent.

As per the respondent, the appellant had entered into an agreement to sell land measuring 7 kanals 12 marlas situated in Village Begumpur, Tehsil Chhachhrauli, District Yamunanagar. As per him, he was always ready and willing but the appellant having backed out the present suit was filed. The case of the appellant on the other hand was that actually the agreement which was executed was a subterfuge because the agreement was obtained by the respondent as a token of security for the repayment of amount which the appellant had taken from the brother of the respondent and consequently the suit be dismissed.

The appellant had also taken the plea that the property was ancestral. The trial court held that the respondent had proved the agreement by examining the attesting witnesses and decreed the suit. In the first appeal, one plea which was taken by the appellant was that originally the appellant had filed a suit for injunction which was later on converted into one for specific performance but he was not allowed to file an amended written statement. The lower appellate court noticed that after the amendment the appellant did not pray to file an amended written statement and continued to participate in the proceedings. Consequently, the lower appellate court also dismissed the appeal. As regards the plea that the property was ancestral, the courts below held that even if this was so, it was clearly mentioned in the agreement that the property was being sold to pay off a loan and held that this plea would be of no avail to the appellant.

Even before me, the same arguments have been raised by the counsel for the appellant but I regret my inability to accept them. There is no evidence that the appellant wanted to amend his written statement . Moreover, once the land was sought to be sold for paying off loan it has to be held that the appellant had the competence to execute the sale deed.

The last argument raised before me is that the appellant was not allowed adequate opportunity to lead his evidence. On the last date, counsel had taken time to place the zimini orders on record. The same have been placed on record today. After perusing the same, I agree with the lower appellate court that adequate opportunity was granted to the appellant to lead his evidence and no prejudice was caused to him.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 02, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No