

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

RSA No.1278 of 2017 (O&M)

Date of Decision: October 05, 2018

Dharampal

...Appellant

Versus

Pirthvi Singh

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.J.P.Sharma, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed the present appeal impugning the judgments of the courts below, whereby, the suit for specific performance filed by the plaintiff – respondent has been decreed.

The plaintiff had filed the suit with the averment that the defendant being the owner in possession of the suit land (measuring 8 Kanal 0 Marlas being 160/4320 share out of total land measuring 216 Kanal 0 Marlas situated in village Nimbi, Tehsil and District Mahendergarh) had entered into an agreement to sell dated 1.11.2006 to sell the same in favour of the plaintiff for total sale consideration of ₹2 lacs. A sum of ₹36,000/- was paid by the plaintiff to the defendant at the time of execution of the agreement. The balance sale consideration of ₹1,64,000/- was to be paid at the time of execution and registration of the sale deed, the last date whereof was fixed as 31.8.2007. The plaintiff has always been ready and willing to

the agreement. However, the defendant failed to perform his part of the agreement. On 31.8.2007 which was the last date for execution and registration of the sale deed the plaintiff remained present in the office of sub-Registrar along with balance sale consideration and other expenses. The defendant, however, failed to appear. Ultimately, the plaintiff got his presence marked before the sub-Registrar by moving an application and also swore an affidavit in this regard. He also sent a legal notice through his counsel calling upon the defendant to execute the sale deed, but to no effect. Hence, the suit.

The defendant was duly served. Initially, he appeared through counsel. However, thereafter, he failed to appear and was proceeded against ex parte vide order dated 28.7.2008.

In order to prove his case, the plaintiff examined himself as PW3. Fakir Chand, deed writer appeared as PW1. Satyavir Singh, attesting witness, appeared as PW2. Plaintiff also placed on record the agreement to sell dated 1.11.2006 as Ex.PW1/B, affidavit dated 31.8.2007 as Ex.PW3/B, application for making his presence as Ex.PW3/C, legal notice dated 4.9.2007 as Ex.P1, postal receipt as Ex.P2, Jamabandi for the year 2000-2001 as Ex.P3. PW1 Fakir Chand deed writer deposed that he had scribed the agreement to sell whereby, the defendant had agreed to sell land measuring 08 Kanal 0 Marlas to the plaintiff for a total sale consideration of ₹2 lacs. After scribing the same, it was read out to the parties in the presence of witnesses. The parties and the witnesses appended their signatures on the agreement to sell after admitting the same to be correct.

witnesses at the time of agreement to sell. The remaining amount of ₹1,64,000/- was agreed to be paid at the time of execution and registration of sale deed. PW2 Satyavir Singh deposed that the agreement to sell was got scribed by Fakir Chand deed writer, who thereafter, read the agreement to sell and explained it to the parties. The plaintiff and defendant put their signatures on the same after admitting it to be correct in his presence and in the presence of the other attesting witness. PW2 also signed the agreement as an attesting witness. PW3 Prithvi Singh also deposed as per the averments in the plaint.

The learned trial Court held that the plaintiff had duly proved the execution of the agreement to sell and his readiness and willingness to execute the agreement. His evidence had gone un-rebutted. In view thereof, the suit was decreed. It was held that the plaintiff is entitled to specific performance of agreement to sell. He was directed to pay the balance sale consideration of ₹1,64,000/- to the defendant against receipt or alternatively deposit the same within a period of two months. The defendant was directed to execute and register the sale deed in favour of the plaintiff within one month thereafter. The expenses for execution and registration of the sale deed were to be borne by the plaintiff. In the event of default by the defendant, the plaintiff was at liberty to get the sale deed executed through court.

The learned lower appellate Court affirmed the findings of the Trial Court.

The findings of fact have been recorded by the courts. It has not

record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in filing the appeal.

October 05, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No