

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

**C.M. No.17065-C of 2018 and
RSA No.1324 of 2017 (O&M)
Date of Decision.17.11.2018**

Chameli Devi (D) through LRsAppellant
Vs

Sourav Singla ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam Saini, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.3153-C of 2017

The application for impleading the legal representatives of deceased-appellant, Chameli Devi is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal only.

C.M. No.17065-C of 2018

The prayer in the application is for preponment of the hearing of appeal as execution of the judgment and decree of the Court below was pending adjudication for 15.11.2018 for submission of the sale deeds.

For the reasons stated in the application, hearing of the appeal is ordered to be proponed for today itself.

Application stands disposed of.

RSA No.1324 of 2017

The appellant-defendant has not been successful in defending the suit claiming specific performance of the agreement to

sell dated 23.12.2009 in respect of land measuring 30 kanals 2 marlas agreed to be sold for total sale consideration of ₹30 lacs, against payment of ₹20 lacs as earnest money. The stipulated date for registration and execution of the sale deed was 25.12.2010. The plaintiff sent legal notice dated 14.12.2010 whereby defendant was called upon to get the sale deed executed on 22.12.2010. However, defendant requested to extend the date of execution upto 10.05.2011. On failure of defendant to get the sale deed executed, plaintiff again sent legal notice dated 18.05.2011 for executing the sale deed on 26.05.2011. When all the effort in vain, suit aforementioned was filed on 01.07.2011.

On preponderance of the evidence, trial Court granted the discretionary relief. Lower appellate court also did not agree with the contention of the appellant-defendant in appeal.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellant submitted that another parcel of land was sold to mother of the appellant vide sale deed dated 22.12.2010, therefore, question of non-performance of the agreement to sell at the behest of the defendant was neither here nor there. This fact has not been adverted to. Payment of sum of ₹20 lacs without any cheque or draft could not have been treated as earnest money. The categorical reply was that it was a loan transaction, thus, the discretionary relief under Section 20 of the Specific Relief Act ought not to have been granted.

I am afraid aforementioned argument of Mr. Saini is not sustainable, as preceding to the filing of the suit, defendant was served with legal notice but did not respond to the same. No

attenuating circumstances have been explained as under what circumstances, signed papers were used as agreement to sell instead of loan transaction nor repayment of the amount of loan has been proved on record. Execution of sale deed in favour of the mother of the plaintiff in respect of other parcel of land, in such circumstances, would be meaningless. For grant of discretionary relief, plaintiff is required to prove readiness throughout. After the expiry of extension period on 26.05.2011, the suit was filed 01.07.2011. Execution and payment of earnest money has also been proved through testimony of PW1 Vijay Kumar and PW3 Bhupinder Singh.

As an upshot of my finding, the argument of Mr. Saini has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

November 17, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No