

RSA-1551-2017 (O&M)

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

RSA-1551-2017 (O&M)

Date of decision : 11.12.2018

Gurdial Singh

... Appellant

Versus

Gurjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P. Kaushal, Advocate
for the appellant.

AMIT RAWAL, J.

CM-3745-C-2017

For the reasons stated in the application, the delay of 157 days
in refiling the appeal is condoned.

CM stands disposed of.

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The appellant-defendant has not been successful in defending
the concurrent findings of fact, whereby the suit of the plaintiffs for specific
performance of agreement to sell dated 09.10.2006, has been decreed by the
trial Court by granting discretionary relief of specific performance, which
has been affirmed by the lower Appellate Court.

The plaintiffs instituted the suit claiming specific performance
of the agreement to sell *ibid* in respect of the suit land having agreed to be
sold @ ₹8 Lacs per acre against the payment of ₹5 Lacs as earnest money.

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The stipulated date for registration and execution of the sale deed was kept as 08.10.2007. Since the defendant did not turn up, the suit, aforementioned, was filed on 15.02.2008.

The defendant opposed the suit by alleging that the agreement was for security purpose as mini bus bearing registration No.PB-23C-9935 was pledged along with permits with plaintiff No.2 and one Bhupinder Singh for a sum of ₹1,06,000/-. On repayment of the entire amount, the documents were returned, but the blank papers have been converted into agreement to sell.

The trial Court decreed the suit by granting discretionary relief. The appeal taken before the lower Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellant-defendant submitted that the attesting witnesses PW1 and Kulwant Singh, much less, PW3, scribe, have not been coherent and consistent to show that the parties had any intention to enter into agreement to sell. In fact, the defendant had never thumb-marked the papers, therefore, the agreement was forged and fabricated. Once the Courts below found that the parties had not intended to sell the property, in such circumstances, could not have ordered for specific performance as the plaintiff failed to prove their financial status/position.

I am afraid the aforementioned argument is not sustainable as all the three aforementioned witnesses i.e. two attesting witnesses and one scribe, have deposed regarding the exchange of money of ₹5 Lacs. In view of the ambiguity with regard to the intention to sell the property, the Court below, in my view, has correctly granted the discretionary relief as the defendant failed to controvert the circumstances of availability of signatures/thumb-impressions on the agreement to sell.

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In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

11.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**