

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.157 of 2017 (O&M)

Date of Decision: November 20, 2018

Ranjit Singh

...Appellant

Versus

Kulwant Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. G.S.Bhatia, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.324-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 62 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.157 of 2017

Appellant-plaintiff has not been successful in a suit for specific performance of the agreement to sell dated 11.08.2006 allegedly executed by the defendant, who is none else but his brother in respect of the suit land agreed to be sold for a total sale consideration of ₹ 1,25,000/- against the receipt of earnest money of ₹ 1,00,000/- in cash. It was attested by none else but Dharam Singh, father of the parties.

Defendant denied the alleged execution of the agreement to sell or receipt of the earnest money.

The trial court dismissed the suit on the premise that the plaintiff has not proved the execution of the agreement as attesting witness (father of the parties) had, in the meantime, died on 29.03.2009. Plaintiff was not successful before the Lower Appellate Court also.

Mr. G.S.Bhatia, learned counsel representing the appellant-plaintiff submitted that during the pendency of the suit, an application for additional evidence for taking the assistance of the expert was filed, but the same was declined. Lower Appellate Court has failed to advert to the aforementioned fact, therefore, there is gross illegality and perversity. The plaintiff had proved the execution of the agreement to sell being himself signatory, but the defendant did not lead any evidence, thus, failed to discharge the onus.

I am afraid, the aforementioned argument is not sustainable as the order declining additional evidence was not assailed in the memorandum of appeal preferred before the Lower Appellate Court as per the provisions of Order 43 Rule 1A of the Code of Civil Procedure. In the absence of proof of execution of the agreement to sell, the payment of earnest money also remained unproved. All these factors weighed in the mind of the courts below to deny the discretionary or alternative relief.

For the reasons stated above, no fault can be found with the concurrent findings of the court below. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 20, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No