

RSA-1694-2017 (O&M)

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

RSA-1694-2017 (O&M)

Date of decision : 07.12.2018

Vijay Kumar

... Appellant

Versus

Satpal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

AMIT RAWAL, J.

CM-17677-C-2018

For the reasons stated in the application, the application is allowed and the appeal is ordered to be restored to its original number i.e. RSA-1694-2017.

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The appellant-plaintiff has not been successful in getting the discretionary relief under Section 20 of the Specific Relief Act, in a suit claiming specific permanent of agreement to sell dated 14.06.2005, in respect of plot measuring 16/1/2 x 42 feet, situated at railway road Taraori, District Karnal, for a valuable consideration of ₹3 Lacs.

It was alleged that time was not the essence of the agreement as the plaintiff was put into physical and actual possession of the suit property. However, vide legal notice dated 24.10.2007, the respondents/defendants

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were requested to remain present before the office of Sub-Registrar on 13.11.2007, but despite the plaintiff being present, the defendants did not come forward, therefore, the suit aforementioned was filed.

The defendants opposed the suit by taking the plea of a loan transaction, which was agreed to be returned within a period of one year. However, due to unavoidable circumstances, it could not be returned.

The plaintiff examined three witnesses and brought on record the documents (Ex.P-1 to Ex.P-16), whereas the defendants examined four witnesses and brought on record Ex.D-1 to Ex.D-3.

The attesting witnesses were none-else, but the brothers of the defendants, they did not support the agreement, but the defendants were not able to belie the signatures, much less, receipt of the money, in such circumstances, the trial Court confined the decree to alternative relief with interest @ 12%.

Learned counsel appearing on behalf of the appellant submitted that the Courts below should have decreed the suit by granting discretionary relief instead of alternative relief as the ingredients of Section 16(c) of the Specific Relief Act have been proved. The defendants failed to explain the circumstances as to how the signatures appeared on the documents alleged to be a loan transaction or a security, when the contents of the documents do not convey it to be an agreement to sell.

I have heard learned counsel for the appellant, appraised the paper book and of the view there is no force and merit in the submissions of Mr. Sood as if at all, the attesting witnesses had deposed in favour of the defendants, nothing prevented the plaintiff to take the assistance of a stamp vendor or a scribe to prove the intention of the parties that they had agreed

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for sale of the land. In such circumstances, the Courts below had treated to be security loan and ordered for refund of money. Even the readiness and willingness was also conspicuously wanting as the suit has been filed nine days short of the expiry of the limitation period. No explanation has come forward what during all this period, the plaintiff had been taking the steps for redressal of the grievance.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**