

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

RSA No.2097 of 2017 (O&M)

Date of decision:28.11.2018

Baljinder Kaur

... Appellant

Vs.

Sukhdev Singh (since deceased) through LR and another

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Nagra, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the specific performance of the agreement to sell dated 07.03.2005 in respect of land measuring 4 kanals 19 marlas out of total land measuring 27 kanals 17 marlas agreed to be sold for a total sale consideration of Rs.6 lakhs against the payment of earnest money of Rs.1 lakh, much less challenging the sale deed dated 12.11.2007 executed by defendant no.2 in favour of defendant no.1.

It was alleged that defendant no.2 did not come forward for performance of the agreement on the stipulated date but during the subsistence of the agreement, sold the land. Defendant no.1 claimed himself to be bonafide purchaser of the suit land, whereas, defendant no.2 denied the execution of the agreement to sell, possession of the plaintiff which was

allegedly claimed to have been handed over to the plaintiff, much less receipt of consideration of Rs.1 lakh.

On preponderance of the evidence, the trial Court dismissed the suit and the appellant was not successful before the Lower Appellate Court.

Mr. G.S.Nagra, learned counsel appearing on behalf of the appellant submitted that the stipulated date was 07.01.2008 and in these circumstances, defendant no.2 could not have executed the sale deed as noticed above which compelled the plaintiff to file the suit on 28.11.2007, therefore, the readiness and willingness cannot be said to be wanting. If at all, the Court had found that the third party rights have been created, the decree could have been confined to the alternative relief.

I am afraid the aforementioned argument is not sustainable as during the cross-examination, the plaintiff revealed the truth of having lent ₹1 lakh for marriage, thus, rightly so, the suit has been dismissed.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 28, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No