

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.509 of 2014 (O&M)

Date of decision: 29.10.2018

Jaswinder Singh

..... Appellant

Versus

Gurjant Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.K. Girdhar, Advocate
for the appellant.

Mr. J.S. Brar, Advocate
for respondent No.1.

Mr. I.S. Mann, Advocate
for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court decreeing the suit for specific performance of the agreement to sell dated 16.05.2006 with respect to the land measuring 11 kanals and 8 marlas agreed to be sold @ Rs.4,60,000/- per acre on receipt of earnest money of Rs.2,00,000/-.

The defendant contested the suit and pleaded that there was an oral agreement to sell with respect to 27 kanals and 1 marla @ Rs.4,60,000/- out of which a sale deed with regard to the land measuring 15 kanals and 13 marlas has been executed in favour of son of the plaintiff on 13.04.2005 for a total sale consideration of Rs.3,91,000/-. Learned trial Court on appreciation of evidence held that the execution of agreement to sell is

proved, however, since the plaintiff has not come to the Court with clean hands, as prior sale deed in favour of son of the plaintiff has not been disclosed, therefore, the relief of refund of the earnest money was ordered. However, learned First Appellate Court after re-appreciating the evidence has found that there is no intentional concealment of the fact by the plaintiff which should result in depriving the relief and the sale deed dated 13.04.2005 is prior to the agreement to sell dated 16.05.2006 and therefore, it had no relevance for the decision of the case. Thus, the First Appellate Court after finding that the discretion exercised by the trial Court is erroneous, choose to grant decree for specific performance of the agreement to sell. Thus, both the Courts below have recorded a concurrent finding that the execution of the agreement to sell dated 16.05.2006 is proved on file and the earnest money of Rs.2,00,000/- has also been paid.

Learned counsel for the appellant submitted that PW-4, Mukhtiar Singh in his evidence has admitted that the total agreement to sell was with respect to the land measuring 27 kanals 1 marla @ Rs.4,60,000/- and therefore, the suit could not be decreed. It will be noted that the sale deed executed with respect to the land measuring 15 kanals 13 marlas in favour of son of the plaintiff has never been challenged. It has never been claimed by the defendant-appellant before filing written statement that he has not been paid the entire sale consideration under the aforesaid sale deed. Still further, the present suit for specific performance of the agreement to sell is with respect to 11 kanals and 8 marlas which is an independent agreement in which neither there is any reference to the prior sale deed nor any prior agreement to sell. The defendant-appellant is claiming oral agreement to sell which is not proved on file. Only document which has

come on record is agreement to sell dated 16.05.2006 execution whereof is proved as found by the Courts below. No doubt, the sale deed dated 13.04.2005 has been produced in evidence, however, on reading thereof, it is not proved that there was any prior agreement to sell with the son of the plaintiff.

In view thereof, the discretion exercised by the learned First Appellate Court is not found to be suffering from any error.

Hence, there is no ground to interfere.

Appeal is dismissed.

29.10.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No