

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.230 of 2018

Date of Decision.12.01.2018

Dharam Singh

.....Appellant

Vs

Smt. Darshna Devi @ Parveen Kaur and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parwinder Singh, Advocate for
Mr. Sachin Ohri, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit instituted by the respondent-plaintiff for claiming possession of suit property consisting of four rooms, 1 kitchen, 1 store, lobby, toilet, bathroom and open yard marked as ABCDEF with consequential relief of permanent injunction restraining the defendants from demolishing any portion of the land and from making any alteration and raising further construction over property marked as ABCDEF, has been decreed by both the Courts below.

Mr. Parwinder Singh for Mr. Sachin Ohri, learned counsel appearing for the appellant-defendant submits that the suit of the respondent-plaintiff claiming relief *ibid* was instituted out of mala fide intent and concealment of material facts. No doubt the ownership of the property had been admitted by the defendant but the fact remains that the plaintiff had entered into an agreement to sell dated 08.03.1995 Ex.D1 and in lieu thereof, an earnest money of ₹7000/- out of total sale consideration of ₹30,000/- was paid. The stipulated date for execution and registration of

the sale deed was 15.06.1995. There is a recital in the agreement to sell that the possession had been delivered. Since the plaintiff did not object to delivering of possession to the defendant and to prove the possession, the electricity bill had been produced on record, the factum of electricity connection issued in the name of the appellant-plaintiff has not been denied in the cross-examination. The plaintiff failed to take a specific plea in the replication *viz-a-viz* the agreement to sell but attempted to challenge the same by filing an affidavit in chief whereas no such cross-examination has been effected on the aforementioned line to the appellant-defendant. If read conjunctively, it leads to irresistible conclusion that there is illegality and perversity in the finding rendered by both the Courts below, therefore, substantial question of law arises for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book. Filing of the replication without permission of the Court is not matter of dispute but the fact of the matter is that the recital in the agreement to sell did not envisage of handing over possession on the receipt of earnest money of ₹7000/-. Rather it envisaged that possession shall be delivered on payment of balance of sale consideration on the target date i.e. 12.06.1995. DW3 Jasbir Kaur, witness of the appellant-defendant admitted that the plaintiff being owner of the property and no sale deed was executed. Even DW2 also admitted as noticed by the Courts below that the appellant-defendant had taken possession forcibly. There was no need for challenging the agreement to sell as having entered. The appellant-defendant ought to have sought the specific performance of the agreement by setting up a counter claim. The agreement to sell does not confer title. Once the appellant-defendant has not been able to prove ownership and the witnesses

of the defendant admitted the ownership of the plaintiff, in my view, the possession of the defendant has rightly been held to be unauthorized.

In view of the above, I do not find any illegality and perversity in the concurrent finding rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determined by this Court. No ground for interference is made out.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 12, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No