

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

**RSA No.4450 of 2017 (O&M)
Date of Decision.19.11.2018**

Puran

.....Appellant

Vs

Virender

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Tewatia, Advocate
for the appellant...

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AMIT RAWAL J. (ORAL)

C.M. No.11602-C of 2017

For the reasons stated in the application, delay of 35 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.4450 of 2017

The appellant-defendant has not been successful in
defending the suit for specific performance of agreement to sell dated
25.08.2010 before the Courts below.

The plaintiff instituted the suit dated 30.05.2011 seeking
specific performance of aforementioned agreement pertaining to land
measuring 8 kanals agreed to be sold for total sale consideration of
₹15 lakhs against the payment of earnest money of ₹11,47,000/-. It
was alleged that 25.02.2011 was fixed as the date for execution and
registration of the sale deed and despite plaintiff being available in
the office of Sub Registrar along with balance sale consideration,
expenses of stamp papers, much less, registration charges, defendant

did not turn up and in this regard, marked the presence. Even legal notice dated 04.04.2011 preceding to the filing of the suit was sent but of no avail.

Defendant opposed the suit by denying agreement and stated to be false, fictitious and an outcome of fraud. Even factum of total consideration and receipt of earnest money was emphatically denied. It was alleged that defendant had borrowed a sum of ₹9,50,000/- from son-in-law named Babinder of Dayawati, who is sister-in-law of defendant for the marriage of daughter on 2.8.2010 and in this regard, agreement was reduced into writing, entailing interest @2%. A sum of ₹4,72,000/- was paid to Babinder and Dayawati and agreement dated 25.08.2010 was cancelled but thereafter another document was reduced into writing after adding interest in the name of Virender plaintiff, who is brother in law of Babinder and amount was calculated as ₹11,47,000/-. The plaintiff and his relatives committed fraud on the defendant and Tuhi Ram, deed writer, who drafted earlier agreement through Udai Chand Kaushik, Advocate got prepared the false agreement dated 25.08.2010. The rate of land had been shown as Rs.20,00,000/- per care on agreement dated 22.10.2008 whereas in the present agreement, rate of land was fixed as ₹15,00,000/- per acre. The defendant repeatedly demanded receipts of ₹4,72,000/- from Dayawati and Babinder but was not returned.

Plaintiff in support of pleadings brought on record Ex.P1 to P7 i.e. Agreement and receipt dated 25.08.2010, Affidavit dated 25.2.2011, legal notice dated 28.2.2011, receipt and legal notice dated

9.4.2011. Babinder Singh, PW4 attesting witness tendered his affidavit Ex.PW4/A. Jamabandi for the year 2002-2003 was tendered as Ex.P8.

Defendant examined himself and closed the evidence.

Mr. Tewatia, learned counsel appearing on behalf of the appellant-defendant submitted that both the Courts below erroneously rejected the stand of the defendant. Plaintiff miserably failed to prove intention to sell the land on behalf of the defendant. No doubt, defendant had not led any evidence but the plaintiff has to stand on his own legs. The Courts below have failed to consider that defendant had taken a sum of ₹9,50,000/- with interest @2% from Babinder and Dayawati on occasion of marriage of daughter and a sum of ₹4,72,000/- was returned. Even application for additional evidence in this regard was submitted before the lower Appellate Court but the same had erroneously been dismissed, for, permission of examination of Jiraj son of Brijlal and Rajender son of Kare, witnesses of agreement to sell was sought.

I am afraid aforementioned arguments of Mr. Tewatia are not sustainable, as the additional evidence sought to be placed on record was beyond pleadings, much less, no explanation has come forth as to how and in what circumstances, witnesses could not be examined at the relevant time. Except bald statement, defendant has not been able to rebut the cogent and consistent statements of deed writer, attesting witnesses and stamp vendor. All these witnesses deposed in the same line that intention of the parties was to enter into agreement to sell and not a loan transaction. If at all, there was no

truth in the averments as noticed in the plaint, defendant ought to have replied to the legal notice. Story of loan transaction coined for the first time is hard to believe in the absence of the any cogent and concrete evidence.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No