

RSA-5629-2017 (O&M)

156

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

RSA-5629-2017 (O&M)

Date of decision : 04.12.2018

Bhupinder Singh

... Appellant

Versus

Harjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Bansal, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-defendant has not been successful in defending the suit for specific performance of the agreement to sell dated 14.09.2009 and permanent injunction in respect of land measuring 68 kanals and 17 marlas.

It was alleged that Bhupinder Singh/defendant was the co-sharer in the joint land measuring 68 kanals 17 marlas. Karnail Singh and Janal Singh along with Bikram Singh on behalf of his father executed an agreement to sell dated 14.09.2009 for a total sale consideration of ₹30 Lacs. The entire consideration was paid and the possession of the land was handed over. Jarnail Singh, the other co-sharer, executed two separate sale deeds dated 18.03.2010 in respect of 8 kanals of land as well as 7 kanals 4 kanals, Karnail Singh also executed sale deed dated 16.03.2010 qua the land measuring 8 kanals. In these circumstances, the performance of remaining 8

RSA-5629-2017 (O&M)

kanals was claimed.

The defendant opposed the suit and admitted his status as co-owner, but denied to have entered into an agreement.

The trial Court decreed the suit and the appeal laid before the lower Appellate Court was dismissed.

Learned counsel appearing on behalf of the appellant-defendant submitted that the total consideration of sale deeds was amounting to ₹27,60,000/- and only ₹2,40,000/- was balance. In such circumstances, the Courts below could not have decreed the suit, in respect of 8 kanals of land. With regard to the other piece of land, the possession of the plaintiff has not been kept in tact. The plaintiff miserably failed to prove the readiness and willingness or execution of the agreement to sell. The report of the handwriting expert should not have been relied upon as it is common practice for expert to submit the report in favour of the plaintiff.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bansal, for, the attesting witness, despite extensive cross-examination, proved the execution of the agreement to sell. Regarding other co-owners, they had already executed the sale deeds and specific performance was confined to the share of the defendant. Expert examined the signatures of Bhupinder Singh/defendant. Viz-a-viz the aforementioned evidence, the defendant did not lead any evidence in rebuttal. It is a common practice among the vendor to deny the agreement to sell and plead non-receipt of the sale consideration or earnest money. Be that as it may, no contrary evidence has been brought to the notice as how and what circumstances, the defendant was not the owner of 8 kanals of

RSA-5629-2017 (O&M)

land in respect of khasra numbers as referred to in the judgment and decree.

In this view of the matter, I do not subscribe to the submissions of Mr. Bansal to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**