

RSA No.5667 of 2017 (O&M)

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

**RSA No.5667 of 2017 (O&M)
Date of decision : 29.08.2018**

Amardeep

... Appellant

Versus

Suhawa Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Suresh Kumar Aneja, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit of the plaintiff for possession has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The aforementioned suit was instituted on the premise that the plaintiff had entered into an agreement to sell dated 06.08.1993 in favour of defendant No.1, who had agreed to exchange the land by transferring the same in favour of the plaintiff. The suit was filed in the year 2005.

The defendants contested the suit on the premise that the transfer of the land by way of exchange was already mutated in favour of the plaintiff on 28.09.1993 and thereafter, the plaintiff had already sold the land vide sale deeds dated 03.01.1994 (Ex.D-1) and 04.01.1994 (Ex.D2).

The trial Court after framing the issues on the basis of the pleadings, on which the parties were at variance and examining the

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evidence particularly the sale deeds, aforementioned, dismissed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

Mr. Suresh Kumar Aneja, learned counsel appearing on behalf of the appellant-plaintiff submitted that the trial Court ought not to have framed issue No.1, which never arose out of the pleadings of the parties and therefore, there is an abdication. The defendants had not been able to prove through direct and cogent evidence and mutation in respect of the transfer/exchange of land as alleged to have been done on 28.09.1993, thus, judgments and decrees of the Courts below suffer from illegality and perversity.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Aneja, for, the plaintiff had not been able to prove on record the fact that property which was transferred in his favour, had already been alienated vide sale deeds dated 03.01.1994 (Ex.D-1) and 04.01.1994 (Ex.D2), whereas the suit for possession in respect of the land, which is subject matter of the agreement to sale dated 06.08.1993, was filed in the year 2005. In my view, both the Courts below ought to have dismissed the suit with exemplary costs.

Be that as it may, the argument of Mr. Aneja, is not able to cut an ice to bring the case within the realm of perversity to form a different opinion than the one arrived at by the Courts below, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed. Consequently,
the application seeking condonation of delay is also dismissed.

29.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No