

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

**RSA No.5928 of 2017 (O&M)
Date of Order:12.11.2018**

Gurbax Singh (since deceased) through his LRs

..Appellants

Versus

Bawa Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.K.Bhatti, Advocate,
for the appellants.

Mr. P.L.Singla, Advocate and
Mr. Rajan Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below while decreeing the suit for possession by way of specific performance of the agreement to sell dated 16.03.2009.

Both the courts have concurrently found that there was an agreement to sell between the parties and the plaintiff was always ready and willing to perform his part of the contract. He was present in the office of Sub-Registrar on the target date i.e. 16.03.2011 fixed in the agreement to sell for execution and registration of the sale deed.

Defendants contested the suit and pleaded that there was no agreement to sell. In fact, plaintiff had agreed to send Palwinder Singh son of defendant no.1 to Canada and in lieu of payment of Rs.30,00,000/- some

blank papers were got signed.

Both the courts have found that apart from oral evidence, defendants have not proved this fact on the record. The courts have noticed the story of signatures on the blank papers stands contradicted because the agreement to sell has been scribed by a professional document writer and entry in the register of the scribe is thumb marked by the predecessor of the defendants. Apart therefrom, there is further endorsement of additional payment of Rs.4,26,000/- on 21.01.2010.

Learned counsel for the appellant has filed an application under Order 41 Rule 27 of the Code of Civil Procedure to lead additional evidence in order to produce copy of the passport of Palwinder Singh, issued on 11.11.2016. He also seeks to produce copies of the revenue record in order to prove that the land was already under mortgage.

The passport has been issued only in the year 2016, whereas the agreement to sell is dated 16.03.2009. Hence, the passport sought to be produced does not advance the case of the plaintiff-appellant.

As regards the property being charged/mortgaged, the plaintiff would get the property subject to the aforesaid charge/mortgage.

Learned counsel for the appellant further submitted that the decree for specific performance would be very harsh and the plaintiff should be only granted relief of refund of earnest money along with appropriate rate of interest.

This court has considered the submission. However, in absence of any issue or foundation being laid before the courts below, this court cannot examine the issue as being submitted by learned counsel for the appellant.

Keeping in view the aforesaid facts, the appeal as well as application for additional evidence is dismissed.

C.M.No.13383-C-2018

In view of the judgment passed above, the present application has become infructuous and is disposed of as such.

November 12, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No