

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-6274-2017 (O&M)

Date of decision: September 17, 2018

Balaka Singh

...Appellant

Versus

Balbir Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sushil Kumar Verma, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/respondents filed a suit for possession by way of specific performance with consequential relief of permanent injunction against the defendant/appellant, alleging that on 16.5.2008, defendant entered into an agreement to sell his land as detailed in the plaint for a sale consideration of Rs.6,87,500/-. Defendant received the total amount of sale consideration at the time of agreement and it was agreed that on notice of the plaintiffs, defendant would get the sale deed executed and registered in their favour. Actual physical possession of the land was delivered by the defendant on the spot. It is pleaded that on 11.01.2011, plaintiffs served a legal notice to the defendant through their counsel with the request to get the sale deed executed and registered on 25.01.2011.

However, on the said date, defendant did not appear before the Sub Registrar and ultimately, plaintiffs got their presence marked by way of affidavit before the Sub Registrar, Sirsa. Suit was resisted by the defendant. In his written statement, he denied execution of any such agreement or payment of the earnest money. He pleaded that he is owner in possession of the suit land. After hearing both the parties and perusing oral as well as documentary evidence, the trial court decreed the suit to the effect that plaintiffs are entitled to recover Rs.6,87,500/- paid to the defendant as full and final consideration, alongwith interest @ 6% per annum, within a period of three months from the date of order. Against the judgment and decree passed by the trial court, both the parties preferred appeal. Vide judgment and decree dated 17.11.2016, passed by District Judge, Sirsa, observation of the trial court was modified holding the plaintiffs entitled to the relief of specific performance and defendant was directed to execute the sale deed within three months from the date of order, failing which plaintiffs would be entitled to get the sale deed executed and registered with the help of court. However, appeal filed by defendant Balaka Singh was dismissed. It has been observed by the first appellate court that since the plaintiffs had already paid the entire sale consideration to the defendant, relief of specific performance cannot be denied to them.

I find no infirmity with the findings arrived at by the first appellate court. It appears, plaintiffs always remained ready and willing to perform their part of contract, but despite legal notice, defendant failed to appear before the Sub Registrar to execute and get the sale deed

registered. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of findings of the first appellate court reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM-16377-C-2017:

Since the main appeal has been dismissed on merits, this application for condonation of delay does not survive and the same is also dismissed.

(RAJAN GUPTA)
JUDGE

September 17, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No