

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.643 of 2017 (O&M)

Date of decision: 02.08.2018

Kasturi Lal

..... Appellant

Versus

Kishan Chand (deceased) through his LRs
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rishabh Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-1387-C-2017

Application is allowed and the delay in filing the appeal is
condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the
concurrent finding of fact arrived at by the Courts below while granting
alternative relief of refund of earnest money along with interest while
refusing the relief of possession by way of specific performance of the
agreement to sell.

It has been noticed by this Court that the alleged agreement to
sell is dated 07.09.2001. As per the agreement to sell, the sale deed was to
be executed and registered on 07.12.2001, however, the plaintiff did not
take any step for a period of one year and almost 11 months. Defendant
No.1 sold the property in favour of defendants No.2 to 4. The sale deed

was executed on 25.10.2003, registered on 31.10.2003. On the same date, the plaintiff filed the suit. Both the Courts keeping in view the aforesaid facts has exercised discretion as provided under Section 20 of the Specific Relief Act. Such discretion exercised by the Courts is in accordance with well settled principles of law.

Learned counsel for the appellant argued that the findings of the learned First Appellate Court that the sale deed was required to be challenged is not correct.

No doubt, the sale deed executed by the owner after entering into an agreement to sell is not required to be challenged as such the plaintiff who seeks specific performance of the previous agreement to sell. Only subsequent vendees who have purchased the property after execution of the agreement to sell but before the filing of the suit, are required to be impleaded as party.

In view thereof, the aforesaid finding of the learned First Appellate Court is set aside. However, even that would not help the appellant because there is no explanation as to why the suit was filed after a period of one year and 11 months and particularly, on the day when the sale deed was registered in favour of defendants No.2 to 4.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

02.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No