

RSA-6471-2017 (O&M)

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

**RSA-6471-2017 (O&M)
Date of decision : 29.11.2018**

Balkar Singh

... Appellant

Versus

Ranjit Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Preet Harinder Singh Pannu, Advocate and
Mr. Parvinder Singh, Advocate for the appellant.

AMIT RAWAL, J.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for joint possession covering up the deficiency in the sale deed dated 07.12.2005 in respect of land measuring 7 kanals 11 marals, which the defendant was found to be deficient, has been decreed from the other parcel of land.

Learned counsel for the appellant submitted that no doubt, in the recital of the sale deed dated 07.12.2005, the vendor had undertaken to recoup the area of the land, if the title was found to be defective. However, in partition proceedings, the share of the defendant was reduced to 3 kanals 15 marals instead of 7 kanals 11 marlas.

Before the lower Appellate Court, an application for additional evidence was filed to bring on record the sale deed dated 26.02.2010 executed by the defendant in favour of the husband of the plaintiff. The aforementioned additional evidence leaves no manner of doubt that deficient area had already been recouped, but the lower Appellate Court

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being the last Court of fact and law has erroneously rejected. The plaintiff in cross-examination admitted to have sold the disputed land allegedly purchased, vide sale deed dated 07.12.2005.

I am afraid the aforementioned argument is not sustainable, for, the sale deed dated 28.02.2010 (additional evidence) has rightly been discarded as the defendant failed to connect the same with the present sale deed. The share of the defendant was reduced not before, but after the sale deed. There was a breach of obligation and for seeking remedy, provisions of Section 39 of the Specific Relief Act can be invoked. Once the defendant has been found to be owner of the lesser area than the one sold and undertaken to cover deficient, there is no illegality and perversity in the concurrent findings of fact. One line here and there in the cross-examination cannot be looked into but the entire pith and substance, particularly in such type of cases as the documentary evidence is the foundation for arriving at determination.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Pannu 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.

29.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**