

RSA-849-2017 (O&M)

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

**RSA-849-2017 (O&M)
Date of decision : 07.12.2018**

Ramesh Kumar

... Appellant

Versus

Shanti and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Bansal, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-plaintiff has not been successful in claiming the possession by way of specific performance of agreement to sell dated 24.09.2007, in respect of land measuring 933 sq. yds, agreed to be sold @ ₹1380 per sq. yds., against the payment of earnest money of ₹2 Lacs by laying challenge to the sale deed dated 06.11.2008.

It was alleged that defendant No.1-Shanti had entered into an agreement to sell *ibid* and the stipulated date for registration and execution of the sale deed was 28.02.2008. However, the plaintiff acquired the knowledge of alienation, subject matter of the suit property, to defendant No.2, vide sale deed dated 06.11.2008, in these circumstances, a cause of action arose to file the suit.

Defendant No.1 was *ex parte*, whereas the defendant No.2, subsequent vendee, opposed the suit and took the plea of *bona fide* purchaser.

Learned counsel appearing on behalf of the appellant-plaintiff

RSA-849-2017 (O&M)

submitted that the execution of the agreement to sell had been proved through the attesting witness-PW3, Dharmvir. The sale deed was during the subsistence of the agreement to sell and the defendant had been putting of the plaintiff on the one pretext or the other. The factum of the sale deed acquired only few days before the filing of the suit. In such circumstances, the suit was filed on 22.02.2011. The Courts below should not have declined the discretionary relief.

I am afraid the aforementioned argument is not sustainable, for, the appellant-plaintiff miserably failed to prove the ingredients of Section 16(c) of the Specific Relief Act as no documentary evidence with regard to the presence on the target date or explanation, has come forth in the plaint as to how, the plaintiff was ready and willing. Even after execution of the sale deed on 06.11.2008, what steps have been taken not to seek the discretionary relief. In such circumstances, the Courts below had no occasion, but to decline the discretionary relief.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**