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

RSA No. 479 of 2019 (O&M)

Date of Decision: 19.03.2019

Jarnail Singh

-Appellant

Vs

Kulwant Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Krishan Sehajpal, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.

1. Defendant is in Regular Second Appeal in a suit for possession by way of specific performance of agreement to sell dated 17.08.2009 executed by the defendant in favour of the plaintiff.

2. The trial Court on the basis of evidence on record decreed the suit for alternative relief of recovery of earnest money of Rs.62,000/- along with interest @ 9% per annum from the date of agreement i.e. 17.08.2009 till passing of the decree and @ 6% per annum from the date of passing of decree till final realization of the amount. There was no order as to costs.

3. Issues No.1 and 4 were collectively decided by the trial Court. Plaintiff himself appeared as PW1 and got examined marginal witnesses- Ajit Singh as PW2 and PW3 scribe –

Santokh Singh. There was no recital of delivery of possession in the agreement as well as in the plaint. Recital to the contrary in the written statement was pleaded to be wrong.

4. The trial Court granted alternative relief even after finding that agreement to sell was lawfully executed between the parties. Defendant did not prove any exception in terms of Section 20 of Specific Relief Act nor brought any incriminating evidence on record.

5. In the written statement, it was asserted that the agreement to sell was not registered document, therefore, the same is inadmissible on the strength of delivery of possession and agreement to sell could not be confirmed for grant of specific performance as sought by the plaintiff. At the same time, agreement to sell was denied.

6. As per evidence led by the plaintiff on record, no delivery of possession was found in favour of the defendant. Cross-examination of PWs did not yield any result in favour of the defendant. No incriminating evidence was produced by the defendant.

7. Against the decree passed by the trial Court, both the parties went in appeal. The appeal filed by the defendant was dismissed by the lower Appellate Court and the appeal filed by the plaintiff-respondent was accepted, thereby granting relief of

specific performance on finding due execution of agreement to sell.

8. It is a settled principle of law that in the event of finding due execution of agreement to sell, normal consequence is to grant decree for specific performance unless and until exception in terms of Section 20 of Specific Relief Act is made out. Hardship and exception in terms of Section 20 of Specific Relief Act have to be pleaded and proved by the defendant.

9. In the instant case, no such evidence has been brought on record nor any pleadings to that effect were made by the defendant in the written statement, rather the appeal filed by the defendant i.e. Civil Appeal No.107/05.04.2016 titled 'Jarnail Singh vs Kulwant Singh' was dismissed by the lower Appellate Court and no further appeal was filed against the said judgment.

10. The findings recorded in the aforesaid appeal would operate as *res judicata* in the present appeal which has been preferred against the decree which has been granted by the lower Appellate Court in the appeal filed by the plaintiff for grant of decree in toto.

11. For the reasons recorded hereinabove, I do not find any justification to interfere in this Regular Second Appeal.

12. No law point worth cognizance is involved in the present appeal.

13. The findings recorded by the lower Appellate Court cannot be held to be perverse or result of mis-reading of evidence in any manner.

14. This Regular Second Appeal is accordingly, dismissed in limine.

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Since the appeal has been dismissed in limine, therefore, there is no necessity of passing any order in the application for condonation of delay in re-filing the appeal.

Application also stands dismissed.

19.03.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No