

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-2526-2019 (O&M)

Date of decision: 23.10.2019

Kabal Singh

..... Appellant

Versus

Jasbir Kaur and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. AS Manaise, Advocate for the appellant.

**RAMENDRA JAIN, (ORAL)**

Through this regular second appeal, appellant-defendant has laid challenge to judgment and decree dated 28.11.2018 of the lower Appellate Court, dismissing his appeal, affirming judgment and decree of trial Court dated 07.07.2015, whereby suit of contesting respondent No. 1-plaintiff for recovery of ₹2,50,000/- along with interest @ 12% per annum from the date of agreement to sell i.e. 17.05.2007, till the date of decree along with future interest @ 6% per annum from the date of decree till realization, was decreed.

Briefly, contesting respondent No. 1/plaintiff-Jasbir Kaur, filed a suit against appellant and proforma respondents No. 2(i) to 2(viii), for possession of land measuring 7 kanals 11 marlas of land, fully detailed in the head note of the judgment of trial Court, situated at village Zahura, Tehsil Dasuya, District Hoshiarpur, alleging that Karam Singh, father of appellant and his co-defendants entered into an agreement dated

A sum of ₹2,50,000/- was paid as earnest money to Karam Singh by respondent No. 1-plaintiff. The date for execution and registration of sale deed was 30.05.2008, on receipt of balance sale consideration. However, Karam Singh, did not fulfill his part of contract, though respondent No. 1-plaintiff was always ready and willing to do so. Resultantly, the date of execution and registration of sale deed expired. Thereafter, Karam Singh, expired in the year 2009, before filing of the suit.

Learned trial Court, after holding trial, decreed the suit for recovery instead of possession by way of specific performance as narrated in the opening part of the judgment.

Being dissatisfied, appellant-defendant approached the lower Appellate Court, but remained un-successful as his appeal too was dismissed, vide judgment and decree dated 28.11.2018.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that suit of plaintiff-respondent No. 1 being barred by limitation was not maintainable. PW-3 Som Nath, attesting witness testified that no money was paid by respondent No. 1-plaintiff in his presence to deceased-Karam Singh. Therefore, validity of agreement to sell in question was not legally proved.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

While dealing with issue No. 6 qua limitation, the learned trial Court categorically held that suit of the plaintiff, being filed within three years, was well within limitation. Learned counsel for the appellant has not been able to point out any infirmity in the said finding of trial Court, which

was duly affirmed by the lower Appellate Court.

As far as, testimony of attesting witness PW-3-Som Nath qua non-passing of earnest money of ₹2,50,000/- in his presence is concerned, respondent No. 1-plaintiff was not required to examine any witness, inasmuch as, examination of attesting witness is necessary only to prove a Will, in view of Section 68 of the Indian Evidence Act, 1872 and no other document in this country.

Thus, in case, statement of PW-3 Som Nath, is excluded from reading, in that eventuality also, respondent No. 1-plaintiff has established her claim beyond reasonable shadow of doubt about execution of agreement to sell dated 17.05.2007 by deceased-Karam Singh.

No question of law, much less substantial, has been raised in this regular second appeal. Hence, the same is held not maintainable.

I have carefully gone through the judgment and decree of both the Courts below and find no illegality and perversity in the same.

Dismissed.

**October 23, 2019**

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**( RAMENDRA JAIN )  
JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable**

**Yes/No**