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

**RSA No.2140 of 2019 (O&M)
Date of Decision: 02.05.2019**

Rakesh Kumar

.....Appellant

Vs

Gurbachan Singh & Anr.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. G.S. Kler, Advocate
for the appellant.

Mr. Kewal Singh, Advocate
for caveator/respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration.

[2]. Plaintiff filed a suit for declaration to the effect that agreement to sell dated 06.06.2011 was executed between the parties, wherein defendant agreed to purchase the suit property owned by the plaintiff for a consideration of Rs.18,00,000/-. An earnest money of Rs.1,00,000/- was paid. The target date for execution and registration of sale deed was fixed for 06.09.2011. Plaintiff sought to cancel the agreement to sell on

the ground that on 06.09.2011, there was gazetted holiday, therefore, on 07.09.2011, plaintiff appeared before the Sub-Registrar along with necessary documents, but the defendant did not turn up. Plaintiff alleged that his presence was not marked by the Sub-Registrar, but he got the affidavit typed and attested through Notary Public, Ludhiana.

[3]. Both the Courts below have found that admittedly a legal notice Ex.P-2 was issued on 16.09.2011 with a stipulation that the plaintiff was ready and willing to perform his part of agreement, but the defendant failed to honour the terms and conditions. Plaintiff remained present in the office of Sub-Registrar on 07.09.2011, but the defendant did not attend the office for registration of the sale deed. Time was claimed to be essence of the contract and breach was committed by the defendant. Therefore, agreement to sell was terminated and earnest money was forfeited.

[4]. It has been further noticed by the trial Court that defendant has proved his presence before the Sub-Registrar on 07.09.2011 by way of affidavit. Plaintiff had dispossessed the defendant from the room in the disputed house. Defendant not only paid the earnest money of Rs.1 lakh, but also paid part sale consideration to the tune of Rs.7 lakhs to the plaintiff. By referring to the statement of PW-2 Bhagwan Dass, both the

Courts have observed that during cross-examination of PW-2, he admitted that he was asked by the plaintiff to accompany him to the office of Sub-Registrar and he remained present in the office of Sub-Registrar from 10.00 a.m. to 3.30 p.m. The witness had given written application to the Sub-Registrar which was not accepted, nor any endorsement was made thereon by the office of Sub-Registrar. Sub-Registrar did not accept the application in the presence of the plaintiff and torn it away. The aforesaid reference viz-a-viz. PW-2 Bhagwan Dass and the overt act done by the witness has neither been pleaded in the pleadings, nor PW-1 Rakesh Kumar (plaintiff) in his examination-in-chief has deposed on these lines.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. During course of hearing, it came to fore that a civil suit for specific performance was filed by the present-defendant and the same was decreed vide judgment and decree dated 30.11.2018 passed by the trial Court. No appeal was filed by the present plaintiff against the said judgment and decree passed by the trial Court. In execution of the decree passed by the trial Court, the sale deed has already been executed and today is the date fixed for taking possession.

[7]. In view of aforesaid attending facts and circumstances

of the case, I find that no indulgence can be granted in favour of the appellant. The findings recorded by the Courts below cannot be held to be the result of any misreading of evidence or suffered with any perversity. No question of law worth cognizance is involved in the present appeal. The appeal is found to be totally devoid of merits and is accordingly dismissed in *limine*.

[8]. Since the appeal is being dismissed in *limine*, therefore, there is no need to decide the pending application(s). The same are accordingly disposed of.

May 02, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No