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

**RSA No.3420 of 2010 (O&M)
Date of Decision: 09.04.2019**

RAJENDER & ANR.

.....Appellants

Vs

RAM KISHAN & ANR.

....Respondents

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

Present: Mr. Shilak Ram Hooda, Advocate
for the appellants.

Mr. Sushil Jain, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. This Regular Second Appeal has been preferred against the judgment and decree dated 16.02.2009 passed by the District Judge, Rewari vide which the appeal filed by the plaintiff was accepted.

[2]. Brief facts are that plaintiff/respondent No.1 filed a suit for specific performance against defendant/respondent No.2 on the basis of agreement to sell dated 06.06.2000. Land measuring 8 Kanals comprised in Khewat No.87 min. Khatoni No.91 min. Rect. No.18, Killa No.8(8-0) was sought to be purchased from the defendant for a total sale consideration of

Rs.1,70,000/-. Earnest amount to the tune of Rs.1,50,000/- was paid and target date for execution of sale deed was fixed as 06.06.2002.

[3]. Perusal of the record would show that the defendant once appeared in the trial Court, but did not file any written statement and thereafter absented from the Court. He was accordingly proceeded against *ex parte*. In the *ex parte* evidence led by the plaintiff, he examined Raj Singh, Advocate as PW-1, Jagat Singh, Advocate as PW-2 and himself examined as PW-3. Thereafter *ex parte* evidence was closed by learned counsel for the plaintiff by making separate statement after tendering documents viz. Ex.PX/1 and Ex.PX/2.

[4]. Plaintiff proved execution of agreement to sell with reference to evidence. The evidence led by the plaintiff went unrebutted and ultimately the suit was decreed by the trial Court vide judgment and decree dated 14.11.2007 for an alternative relief of recovery of Rs.1,50,000/- along with interest @ 18% per annum on the premise that the value of the land had increased manifold and the land was under mortgage with Rewari Primary Cooperative Agricultural and Rural Bank Limited.

[5]. Defendant did not file any appeal against the judgment and decree dated 14.11.2007 passed by the trial Court, nor filed any application for setting aside the *ex parte* order/judgment

and decree under Order 9 Rule 13 CPC before the same Court.

[6]. Feeling dissatisfied against the judgment and decree passed by the trial Court, the plaintiff preferred an appeal before the lower Appellate Court. The lower Appellate Court vide judgment and decree dated 16.02.2009 accepted the appeal, thereby decreeing the suit *in toto* on the premise that increase in the price of land was not the ground to discard specific performance particularly when execution of agreement to sell was proved. Secondly, the land had already been redeemed from the Bank.

[7]. Defendant never filed any further appeal. The appellants are alleged to have purchased the land during pendency of the suit before the trial Court on 09.07.2004. The suit was filed on 16.06.2003. The appellants have filed the application under Order 22 Rule 10 read with Section 151 CPC for impleading themselves for seeking permission to file Regular Second Appeal being assignee of the defendant.

[8]. The appellants being *vendee lis pendens* would step into the shoes of their vendor, who did not take any step to contest the suit before the trial Court as well as lower Appellate Court. No evidence was led by the defendant. It is a settled principle of law that if the execution of agreement to sell is proved, normal consequences are to answer the claim by

decreeing the suit for specific performance, unless and until hardship is pleaded by the defendant in the written statement and proved by leading cogent evidence. The hardship has to be pleaded and proved on record.

[9]. In the instant case, defendant after appearing before the trial Court preferred to be proceeded against ex parte. No written statement was filed. After the judgment and decree passed by the trial Court, no challenge was made by the defendant either by filing appeal before the lower Appellate Court or to file an application under Order 9 Rule 13 CPC. It was the plaintiff, who after feeling aggrieved against the judgment and decree passed by the trial Court went in appeal and the appeal was accepted thereby decreeing the suit in toto.

[10]. During course of arguments before this Court, it has been found that in the execution of the impugned judgment and decrees passed by the lower Appellate Court, the sale deed has been executed with the process of the Court and the possession has already been delivered to the decree-holder/respondent No.1.

[11]. For the reasons recorded above, the findings recorded by the Courts below are not found to be suffered with any misreading of evidence nor the same are suffered with any kind of perversity. No question of law worth consideration is involved

in the present appeal. The same is accordingly dismissed. All pending applications are accordingly disposed of.

April 09, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No