

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

**RSA No.3726 of 2013 (O&M)
Date of decision:22.04.2019**

Malkiat Singh

... Appellant

Vs.

Surjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek K. Thakur, Advocate
for the appellant.

Mr. Naresh Kaushik, Advocate
for the applicant/respondent no.1.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby decree in a suit for specific performance of the agreement to sell has been confined for refund of earnest money alongwith interest.

The plaintiff sought the specific performance of the agreement to sell dated 23.10.1998 alleged to have been executed by appellant-defendant in respect of land measuring 16 kanals for a total sale consideration of Rs.6.00 lakhs against the payment of Rs.4.00 lakhs as earnest money. The stipulated date for execution and registration of sale deed was 18.11.1999. The suit was filed on 16.12.2002.

The defendants opposed the suit and stated that plaintiff was a commission agent and had been selling the crop to him and such transactions might have been converted into agreement to sell. Replication was filed admitting the status of plaintiff as commission agent but denied the use of blank papers

The plaintiff in support of the aforementioned pleadings examined himself, deed writer and attesting witness whereas defendant no.1 examined himself as DW2, Bhulla Singh as DW3 and Hazoor Singh as DW1.

Mr. Vivek K. Thakur, learned counsel appearing on behalf of the appellant-defendant submitted that deed writer did not bring on record the register as it was stated to have been lost. DDR in this regard was lodged. The defendants were never contacted but in 2002 filed the suit for recovery on the basis of the amount which was decreed. There was no reference of agreement to sell. The plaintiff had been indulging into execution of the frivolous documents. The readiness and willingness was also conspicuously absent. The agreement to sell does not bear his signatures.

I am afraid the aforementioned arguments are not sustainable, for, if at all there was some truthfulness, the appellant-defendant could have taken the assistance of the expert and as well as other attenuating circumstances. Both the Courts below found the transaction particularly the agreement to sell as a security and therefore, confined it to the relief of recovery. It is not necessary that plaintiff may indulge with other steps, post

the present suit. It is a matter of record that other civil suit was decreed but execution is pending.

Mr.Naresh Kaushik, learned counsel for the applicant/respondent No.1 pressed the civil miscellaneous application bearing No.10492-C of 2015 to defend his claim regarding specific performance as per the provisions of Order 41 Rule 33 of Code of Civil Procedure. The readiness and willingness was conspicuously wanting as the suit was filed on 16.12.2002. No explanation has come on record for having not been ready and willing during all this period. The law on this point is no longer *res integra* in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **B.Vijaya Bharti vs. P. Savitri and others 2017(4) CCC 291.**

The application is accordingly dismissed.

The finding of fact and law cannot be said to be suffering from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 22, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No