IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.1874 of 2016 (O&M)
Date of decision:26.3.2019

Fateh Singh ... Appellant

Vs.

Laxman Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.P.Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the suit for specific performance of agreement to sell dated 12.07.2005 in respect of 1/48 share instead of 1/24 out of the suit land measuring 17 bighas 6 biswas allegedly entered into for a total sale consideration of Rs.2,50,000/- against the payment of Rs.2,25,000/- as earnest money by stipulating the date for execution and registration of the sale deed as 10.04.2006. Despite his appearance before the office of Sub Registrar, defendant did not come forward.

The defendant contested the suit and denied the execution of the agreement to sell, intention to sell the land, much less receipt of earnest money.

The plaintiff in support of the aforementioned pleadings brought on record numerous documents including the report of handwriting expert and statement of the attesting witnesses. On the other hand, defendant examined four witnesses and brought on record Ex.DA, Ex.DW4/A and Ex.DW4/B.

Mr. J.P.Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that agreement to sell though had allegedly been proved but not executable on the premise that appellant-defendant did not have the alienable right to the extent of 1/24 share. The Courts below could not have modified the terms and conditions confining it to 1/48 share and ordered for refund of balance sale consideration by assessing its value. PW7 was not conversant with the facts of the case. The agreement to sell was procured by the son of Laxman from the son of Fateh Singh in connivance with Amar Singh as it was money transaction.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, unimpeachable evidence not only proved the execution of the agreement to sell but intention of the parties as well as receipt of earnest money.

The law with regard to confining the decree to the extent of ownership is no longer res integra. Once the revenue record established the title of the defendant to the extent of 1/48 share instead of 1/24 share, decree confining to such relief cannot be said to be suffering from illegality and perversity.

As an upshot of my findings, arguments of Mr. Sharma, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No