

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

**RSA No.2339 of 2016 (O&M)
Date of decision:07.02.2019**

Karnail Singh

... Appellant

Vs.

Chhavinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Sewak, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant No.1 has not been able to defend the suit preferred by the respondent-plaintiff for declaration of ownership of land measuring 2 kanals on the basis of agreement to sell dated 01.06.2002 and 01.07.2002 executed by defendant no.2 in favour of the plaintiff and alleged agreement to sell dated 12.6.2002 by laying challenge to the sale deed dated 20.06.2002 propounded by defendant no.1.

The plaintiff proved the aforementioned agreement to sell and sale deed, in accordance with law through the testimony of the attesting witnesses. Appellant-defendant no.1 in the written statement categorically alleged that sale deed in his favour, was prior to the sale deed of the plaintiff and preceded by agreement to sell dated 01.06.2002. Defendant no.2 was proceeded against ex parte. However, during the pendency of the suit, appellant-defendant no.1 was also proceeded ex parte. The application was

filed for setting aside the ex parte proceedings which was allowed and also brought on record the certain evidence.

Mr. B.S.Sewak, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that both the Courts below have non-suited the appellant-defendant no.1 on the premise that sale deed has not been brought on record but remained oblivious of the fact that sale deed subject matter of the suit property is under challenge. Similar is the argument with regard to agreement to sell, therefore, in such circumstances, onus was upon the plaintiff to discharge. The appellant was not given any chance to cross-examine the witnesses of the plaintiff, who allegedly proved the agreement to sell dated 01.07.2002. The sale deed dated 20.06.2002 was of valuable consideration of Rs.22,000/- and Rs.10,000/- was paid and remaining amount of Rs.93,000/- to be paid was not paid, therefore, the same was reflected when placed before the Sub-registrar for registration. All these factors have not been looked into correct perspective, therefore, there is gross illegality and perversity.

I have heard the learned counsel for the appellant-defendant no.1, 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. Sewak, for, appellant-defendant no.1 has failed to move any application before the Lower Appellate Court for recalling of the witnesses, much less challenged interim order in appeal as per provisions of Order 43 Rule 1-A of Code of Civil Procedure. The agreement to sell in favour of the respondent-plaintiff is prior to the sale deed dated 20.06.2002 of the appellant-defendant no.1.

The copy of the agreement to sell dated 1.7.2002 set up in the written statement was not denied, thus, for all intents and purposes, sale deed in favour of the appellant proved the subsistence of the agreement to sell in favour of the plaintiff. No evidence has been placed on record to show the receipt of Rs.93,000/-, in other words, payment of Rs.93,000/- remained mystery.

As an upshot of my findings, arguments of Mr. Sewak, are not 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 appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 07, 2019
savita

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