

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

**RSA No.3307 of 2016 (O&M)
Date of decision:21.01.2019**

Devinder Singh

... Appellant

Vs.

Kuldeep Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurcharan Dass, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in seeking specific specific performance of the agreement to sell dated 28.12.2005 before the trial Court as well as in appeal.

The agreement to sell aforementioned was entered into between the parties in respect of house measuring 239 square yards agreed to be sold for a total sale consideration of Rs.10,50,000/- and receipt of Rs.4,15,000/- as earnest money and remaining amount was to be paid on the target date i.e. 22.12.2008.

It was alleged that plaintiff prepared a draft of Rs.6,35,000/- and went to the office of Sub Registrar but the defendant did not come forward. The readiness and willingness was there and necessitating the plaintiff to file the suit in February, 2009.

The defendant opposed the suit and explained that agreement to

sell was false, forged and fabricated documents and there was no intention to sell her house. The defendant had obtained the loan of Rs.70,000/- which was paid by the plaintiff through self cheque and thereafter, in January, 2006, a sum of Rs.30,000/- which was also paid by the self cheque. The defendant later on repaid the said loan amount to the plaintiff by the end of March 2008. The plaintiff did not return the blank signed papers which were converted into agreement to sell. It was stated to be a case of fraud.

The plaintiff examined himself as PW2, Rajinder Singh as PW3, Jagdish Chand as PW4 and brought on record Ex.P1 to Ex.P5, whereas, defendant examined herself as DW1 and tendered affidavit, Ex.DW1/A and proved on record reply of the legal notice as Ex.D1.

Mr. Gurcharan Dass, learned counsel appearing on behalf of the appellant-plaintiff submitted that in case the Court below was not inclined to grant the discretionary relief, payment had since been proved, as the recital of the agreement to sell revealed that a sum of Rs.70,000/- vide cheques dated 28.12.2005, Rs.30,000/- dated 4.1.2006, Rs.20,000/- dated 16.1.2006 had been paid and this fact was not denied. For all intends and purposes, plea of loan was liable to be discarded as the terms and conditions of the agreement expressed the intention of the parties.

I am afraid the aforementioned arguments are not sustainable, for, PW3-Rajinder Singh deposed that no money was exchanged or paid by the plaintiff to Kuldeep Kaur/vendor. PW4-Jagdish Chand also feigned ignorance of Kuldeep Kaur as he did not know her before. The best possible evidence for the plaintiff to prove that stamp papers were purchased with

intention for purchase and sell the house, was stamp vendor. Non-examination of the stamp vendor remained mystery. The alleged payment made vide aforementioned cheques was in consonance with the stand taken in the written statement for obtaining the loan of Rs.70,000/- and Rs.30,000/-. All these factors weighed in the mind of the Courts below while dismissing the suit.

In view of above, no ground is made out for interference.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 21, 2019
savita

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