

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

**RSA No.3826 of 2016 (O&M)
Date of Decision.04.02.2019**

Kesar Kaur and another

...Appellants

Vs

Balbir Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Rupinder K. Thind, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.9945-C of 2016

For the reasons stated in the application, delay of 36 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.9946-C of 2016

For the reasons stated in the application, delay of 5 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.3826 of 2016

The appellants-plaintiffs have not been successful in
seeking discretionary or alternative relief in the suit for specific
performance of agreement to sell dated 26.08.2006 whereby the
defendants had allegedly agreed to sell a covered plot measuring
378.12 sq. yards for total sale consideration of ₹19,00,000/- against
the payment of ₹5,00,000/- as earnest money. Though the original

target date was fixed as 26.08.2007 but on 09.04.2007, after receipt of another amount of ₹1 lakh, was extended upto 09.01.2008 and the suit was filed on 3.7.2008 when the defendants refused to come forward for execution and registration of the sale deed on target date.

Defendants denied the execution of the agreement to sell stated to be a forged and fabricated document, much les, receipt of earnest money and its extension. In the written statement filed by defendant No.1, it was alleged that both the plaintiffs were real sisters of defendant No.1 and the alleged witness was none else but Hardial Singh, husband of plaintiff No.2. Defendant No.1 had entered into agreement to sell dated 28.6.2006 with respect to one measuring 131.25 sq. yards situated in village Heir in favour of defendant No.2 before her marriage for a consideration of ₹2,20,000/- and had received ₹1,20,000/- as earnest money. Sale deed was executed on 24.08.2008. Another agreement dated 28.6.2006 was executed with defendant No.3 in respect of area measuring 175 sq. yards for a consideration of ₹3,00,000/- and an amount of ₹1 lakh was received as earnest money.

Defendant No.2 filed separate written statement and the stand was in tandem with defendant No.1.

Defendant No.3 also acknowledged to have entered into agreement to sell in respect of plot measuring 175 sq. yards.

In support of evidence, plaintiff No.1 examined herself as PW1 and Hardial Singh as PW2 and tendered documents Ex.P1 to P7 and Mark X whereas defendants examined as many as nine witnesses.

Ms. Rupinder Kaur Thind, learned counsel appearing on behalf of the appellants submitted that agreement to sell was proved through the testimony of Hardial Singh. It is a common practice amongst parties known to each other to have a known witness and not stranger. Neither signature on the agreement to sell were disapproved nor controverted. As per admission in the written statement, habit of defendant No.1 of executing various agreements to sell cannot be ruled out. The amount of Rs.5 lakhs was arranged by selling agricultural produce, thus, it is not necessary to prove its source. All these factors have not been examined in correct perspective, therefore, there is illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submission of Ms. Thind, for, Balbir Singh, plaintiff-Kesar Kaur and Swaran Kaur are none else but brother and sisters. Hardial Singh is the husband of plaintiff No.2-Kesar Kaur. There is no explanation as to why other witness was not introduced. Hardial Singh in the cross-examination admitted that agreement to sell was scribed by Dinesh Kumar but he was not examined for the reasons known to plaintiff nor the stamp vendor. Even name of commission agent to whom plaintiffs allegedly sold the agricultural produce remained a mystery. In such circumstances, plaintiffs miserably failed to prove intention of the parties to sell and purchase the land or the execution of agreement to sell.

In view of aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact arrived at by

the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 04, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No