

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

RSA No.3860 of 2016 (O&M)

Date of decision:15.02.2019

Harish Chand

... Appellant

Vs.

Tula Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shiv Kumar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the specific performance of the oral agreement to sell dated 23.4.2009 allegedly to be executed by the defendants in respect of the land measuring 5 kanals 17 marlas and also for setting aside sale deed dated 8.6.2009 executed by defendant no.1 in favour of the subsequent vendees.

The plaintiff alleged that defendants being co-owners had agreed to sell the land for a sum of Rs.4,25,000/- and paid a sum of Rs.45,000/- as advance through cheque no.83571 dated 23.4.2009 in the presence of the witnesses Rajbir Singh son of Gyasi Ram and Suresh Chand. In lieu thereof, defendants handed over the copy of jamabandi for the year 2002-03 on 14.04.2009. On 28.4.2009, another amount of Rs.30,000/- in cash was paid and Rs.1,65,000/- through cheque no.515296 dated 28.5.2009. On 30.5.2009, Rs.1.00 lakh in cash was also paid. In this way,

total Rs.3,40,000/- was paid in the presence of the witnesses. The defendants did not come forward for execution and registration of the sale deed. The plaintiff realized that defendant already parted with the title vide sale deed dated 8.6.2009 in favour of defendants no.3 to 6.

Defendants no.1 and 2 opposed the suit and admitted the ownership of the land and denied the oral agreement, rather explained that they had extended a loan of Rs.3,50,000/- to the plaintiff with interest @ Rs.2% per month owing to the good relation. Defendants no.3 to 6 and 7 filed separate written statement and claimed themselves to be bonafide purchasers.

The plaintiff in support of the aforementioned averments examined seven witnesses including the witnesses who were present at the time of alleged payment. On the other hand, defendants examined four witnesses.

Mr. Shiv Kumar, learned counsel appearing on behalf of the appellant-plaintiff submitted that judgments and decrees of both the Courts below are not sustainable in the eyes of law, once the payment of the amount as noticed above through cheques and cash had been proved to the hilt and acknowledged by the attesting witnesses, intention of the parties to purchase and sell the property has been proved. The defendants failed to place on record any material with regard to extension of loan as the suit for recovery was also dismissed, decision of which was sought to be placed on record by way of additional evidence before the Lower Appellate Court. The said application has erroneously been dismissed.

I am afraid the aforementioned arguments are not sustainable, for, the plaintiff has miserably failed to prove the receipt of the cash amount. It is not deciphered that as to how and under what circumstances, cheques were paid, whether it was in lieu of repayment of loan allegedly extended by the defendants or some other transaction. Once the plaintiff had been paying the amount through cheques, it is not comprehensible why the agreement was not written, much less receipts which can be treated as agreement in case the intention is reflected.

As an upshot of my findings, arguments of Mr. Shiv Kumar, 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 appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 15, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No