

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

RSA No.4580 of 2016 (O&M)

Date of decision:15.01.2019

Brahamjit

... Appellant

Vs.

Maman and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kul Bhushan Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby, the suit has been partly decreed to the extent of remaining land measuring 34 kanals alongwith refund of Rs.4.00 lakhs.

Defendant no.1 was owner in possession of 188/594 share of agricultural land measuring 9 kanals 8 marlas situated in the revenue estate of Rewari. Agreement to sell dated 29.09.2000 was entered into between the parties in respect of land @ Rs.8,22,500/- in lumpsum and a sum of Rs.1,22,500/- was paid as earnest money and Rs.6.00 lakh was paid to the seller in the presence of attesting witnesses of the agreement and remaining Rs.1.00 lakh was paid on 19.09.2004 as the last date for execution and registration of the sale deed was extended upto 19.09.2004. The defendants during subsistence of the of the agreement to sell, had sold the land

measuring 40 marlas vide sale deed dated 12.07.2006.

The trial Court though dismissed the suit but the Lower Appellate Court as noticed above has partly decreed the same.

Mr. Kul Bhushan Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that defendant no.2 had not stepped into witness box in order to prove the case of bonafide purchaser. The entry of the sale deed in the revenue record was reflected on 13.08.2006, therefore, cause of action accrued to file the suit on 18.09.2007. Defendants had executed various sale deeds in favour of the plaintiff which has been further sold by the plaintiff by carving out the plots. The readiness and willingness had been proved as the entire sale consideration had been paid, therefore, there is gross illegality and perversity in the findings under challenge. Even the provisions of Specific Relief Act, had not been complied with.

I am afraid the aforementioned arguments are not sustainable, for, despite the last extended date i.e. 19.09.2004, no overt act of the plaintiff has been established regarding readiness and willingness and resulted into creation of third party rights vis-a-vis 2 kanals of land i.e. 40 marlas land in favour of the plaintiff. Non-appearance of defendant no.2 cannot be fatal as onus for discretionary relief heavily relied upon the plaintiff. The sale deed in the revenue record was reflected on 13.08.2006 and the suit was filed after almost one year thereafter. The findings of fact and law in partly decreeing the suit to the extent of remaining land measuring 34 kanals alongwith refund of Rs.4.00 lakhs cannot be said to be suffering from illegality and perversity.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019
savita

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