

**RSA-4924-2016 (O&M)**

**107**

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

**RSA-4924-2016 (O&M)**

**Date of decision : 29.01.2019**

Mahinder Singh and others

... Appellants

Versus

Chandan (deceased) through LRs and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Vineet Chaudhary, Advocate  
for the appellants.

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**AMIT RAWAL, J. (ORAL)**

**CM-12843-C-2016**

For the reasons stated in the application, the delay of 178 days  
in refiling the appeal is condoned.

CM stands disposed of.

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The appellants-plaintiffs have not been successful in defending  
the appeal preferred by the defendants before the lower Appellate Court  
against the judgment and decree of the trial Court, whereby the suit for  
specific performance of agreement to sell dated 04.05.2006 was decreed.

It was alleged that the defendants had entered into agreement to  
sell in respect of a land measuring 10 kanals agreed to be sold @  
₹6,00,000/- per acre, against the payment of ₹3,20,000/- as earnest money.  
The stipulated date for registration and execution of the sale deed was  
20.09.2006, but the defendants did not appear. Before filing of the suit on  
11.09.2007, it was preceded by two legal notices dated 06.10.2006 and

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27.02.2007.

The defendants opposed the suit and denied to have entered into agreement to sell on the premise that the plaintiffs had obtained the thumb-impressions on some blank papers on the pretext of sending the people abroad and had also taken photographs of his son by receiving a sum of ₹1 Lac, but failed to send the son abroad and in lieu thereof, converted the same into agreement to sell.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the defendant executed an agreement/contract to sell dated 4.5.2006 after receiving ₹3,20,000/- and defendant is liable to execute sale deed in view of agreement/contract dated 4.5.2006? OPP*
2. *Whether plaintiffs are entitled in alternative to received ₹6,40,000/- along with interest @ 18% per annum from the defendant? OPP*
3. *Whether the suit is not maintainable? OPD*
4. *Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD*
5. *Whether the plaintiffs are stopped by their own act and conduct from filing the present suit? OPD*
6. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
7. *Whether this Court has no jurisdiction to try and entertain the present suit? OPD*
8. *Whether the plaintiffs have concealed the true and material facts from the court? OPD*
9. *Relief.*

The plaintiffs examined Mahinder Singh himself as PW1, Virender Singh as PW2 and Vineet Gulati as PW3 and brought on record

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various documents (Ex.P1 to Ex.P10), whereas the defendants examined Sukhbir Singh as DW1 and Paramjit Singh as DW2 and tendered in evidence the document Ex.D1.

On the basis of the preponderance of evidence, the trial Court decreed the suit, but the lower Appellate Court has reversed the judgment and decree of the trial Court.

Learned counsel for the appellants-plaintiffs submitted that the judgment and decree of the lower Appellate Court is wholly erroneous, for, the attesting witnesses of the agreement to sell proved the intention of the parties. It is not necessary that the vendee is required to append the signatures as vendor has on account of his own volition, signed the agreement to sell and had taken the earnest money of ₹3,20,000/-, even if, the property was mortgaged, it does not make any difference as the entry in the jamabandi continued to subsist.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no merit in the submissions of Mr. Vineet Chaudhary, for, the back side of the stamp paper did not reveal the purpose, it was purchased for. The recital in the agreement with regard to the property being free from encumbrance was against the entry in the revenue record. There were many other circumstances, which have gone unnoticed by the trial Court, but the specifically mentioned by the lower Appellate Court while reversing the judgment and decree of the trial Court. There is no mention of the name of the scribe, who typed the impugned agreement. Since the agreement to sell was proved, therefore, the lower Appellate Court confined the alternative relief of refund of earnest money along with interest @ 9% per annum.

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No ground is made out for interference, much less, no substantial question of law arises for determination and accordingly, the second appeal is dismissed.

**29.01.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**