

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

**RSA No.4511 of 2015 (O&M)
Date of Decision.01.02.2019**

Parshotam Dass Sharma

...Appellant

Vs

Gurcharan Singh alias Kaku and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Bhalla, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

The present appeal is directed against the concurrent finding of fact whereby the suit of the plaintiff for specific performance of agreement to sell dated 25.04.2005 in respect of land measuring 7 kanals 16 marlas, agreed to be sold @₹6,76,000/- per acre, against the earnest money of ₹2 lakhs, has been dismissed by the trial Court and affirmed in appeal by the lower Appellate Court.

The plaintiff alleged that the defendant had extended the stipulated date from 10.05.2005 to 25.05.2005 but did not come forward for execution and registration of the sale deed, resultantly suit was filed on 22.05.2008. Before that legal notice dated 22.02.2006 was also sent.

The defendant contested the suit and admitted the agreement to sell but stated that plaintiff was not having the balance sale consideration and a notice dated 2.6.2005 was served upon him cancelling the agreement.

Plaintiff examined two witnesses and brought on record documentary evidence Ex.P1 to P7 whereas defendant examined

himself and brought on record Ex.D1 to D4.

Learned counsel appearing on behalf of the appellant submitted that the readiness and willingness on behalf of the appellant had been proved on record from the facts as noticed above, particularly, when agreement to sell had been admitted. The alleged notice for cancellation and forfeiture was not received, as no postal receipt has been produced.

I am afraid aforementioned argument is not sustainable as the documents i.e. postal receipt and notice dated 2.6.2005 had been placed on record but the plaintiff sent legal notice dated 22.02.2006. The suit for specific performance was filed in 2008. No explanation of readiness and willingness throughout this period, after notice of 2006, has come on record. Even otherwise, in the absence of challenge to the cancellation and forfeiture, simplicitor suit for specific performance was not maintainable, in view of the ratio decidendi culled out by Hon'ble Supreme Court in **I.S. Sikandar through LRs Vs. K. Subramani and others 2014(1) RCR (Civil) 236.**

In view of the aforementioned situation, I do not find any illegality and perversity in the concurrent finding of fact rendered 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 01, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No