

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

**RSA No.701 of 2016 (O&M)
Date of Decision.21.01.2019**

Brij Lal ...Appellant
Vs

Karam Chand ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant has not been successful in defending the suit for specific performance of agreement to sell dated 18.05.2006 alleged entered in favour of the respondent-plaintiff.

The respondent-plaintiff sought the specific performance of the agreement to sell dated 18.05.2006 in respect of the land measuring 16 kanals i.e. 1/3rd share out of the total land measuring 48 kanals for total sale consideration of ₹4 lacs against the earnest money of ₹3 lakhs. The stipulated date for registration and execution of the sale deed was fixed as 18.05.2007. It was alleged that the plaintiff was already in possession as mortgagee in respect of land measuring 8 kanals vide mortgage deed dated 7.1.2006 and remaining 8 kanals in possession of father of plaintiff vide mortgage deed dated 5.10.2001. The defendant did not come forward despite the fact that the plaintiff had been ready and willing. The suit was filed on 30.05.2007, preceded by legal notice dated 21.05.2007.

The defendant opposed the suit and denied the signature

on the agreement to sell and receipt but coined the story of having taken loan of ₹2 lakhs, which was to be repaid up to 18.5.2007 along with interest of ₹1 lakhs. But intention of the plaintiff by using the aforementioned papers for agreement to sell turned dishonest.

The plaintiff in respect of the evidence examined PW1 Ram Kishore, himself as PW2, Raj Pal deed writer as PW3, Govind Ram Lambardar as PW4, Devi Charan as PW5 and brought on record original agreement sell and receipt as Ex.P1 and P2, endorsement Ex.P3, affidavit Ex.P4, registered AD/legal notice Ex.P5, postal receipt Ex.P6, copy of register of deed writer Ex.P7, aks sijra Ex.P7, mutation No.277 Ex.P8, jamabandi for the year 2005-06 Ex.P9, khasra girdawari Ex.P10.

Defendant examined Govind Ram Lambardar as DW1, Om Parkash Lambardar DW2, himself as DW3 and tendered documents Ex.D1 to D9 i.e. certified copy of plaint, written statement, order dated 17.9.2010, complaint, statement of Govind Ram, statement of Om Parkash, statement of Uday Chand Kaushik, Advocate and affidavit of Karam Chand.

Learned counsel appearing on behalf of the appellant-defendant submitted that witnesses of the plaintiff did not prove execution of the agreement to sell as feigned ignorance with regard to exchange of ₹3 lakhs as earnest money. Plaintiff has not been able to prove readiness and willingness. His own witnesses have deposed against him and in such circumstances, discretionary relief under Section 20(2) of the Specific Relief Act could not have been granted.

I am afraid aforementioned arguments of learned counsel

for the appellant are not sustainable, for, registered documents carry presumption of truth. Witnesses of the defendants though stated it was a loan transaction but loan was not extended in their presence. Lambadar appeared for both plaintiff and defendant. Deed writer has proved execution of the agreement to sell. Once the document is registered, even if it did not reflect exchange, the defendant has not been able to belie signatures on the agreement to sell and also failed to prove that there was no intention to sell the piece of land, particularly when plaintiff was mortgagee of 8 kanals of land. The aforementioned factum of mortgage also remained uncontroverted. All these factors weighed in the mind of Courts below while rendering the concurrent finding of fact and law.

I do not find any illegality and perversity in the judgments and decrees of 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

January 21, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No