

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

**RSA No.3370 of 2014 (O&M)
Date of Decision:28.03.2019**

Lekh Raj

...Appellant(s)

Versus

Partap Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sanjiv Gupta, Advocate for the appellant.
Mr.Tushar Gautam, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, declining the relief of specific performance of the agreement to sell, while ordering refund.

Basically the discretion exercised by the courts below, ordering refund has been challenged by the plaintiff in this appeal. The courts below have noticed following reasons to decline the relief of specific performance of the agreement to sell:-

- (i) Presence of the plaintiff in the office of the Sub Registrar on the target date i.e. 8.12.2004 has not been proved, although the execution and registration of the sale-deed was to take place in the office of Sub Registrar.
- (ii) The plaintiff after 8.12.2004 i.e. the target date for execution and registration of sale-deed did not take any step for almost a period of three years i.e. till 20.11.2007 before straightway filing the suit and there is an unexplained time gap of three years.

Learned counsel for the appellant has submitted that execution

of the agreement to sell was denied and, therefore, delay on part of the plaintiff cannot be visited with consequences of denial of specific performance.

This Court has considered submission, however, unable to agree with the same.

The specific performance of the agreement to sell is a discretionary relief as per the provisions of the Specific Relief Act, 1963 and the plaintiff has to show and prove that he was always ready and willing to perform his part of the contract. In the present case, facts, which have been noticed above, lead the Court to a different conclusion. Still further, the defendant has taken a stand that the plaintiff is a money lender and he had gone to borrow a sum of Rs.1,50,000/- and on that pretext, the plaintiff had obtained his thumb impressions/signatures on the blank papers but thereafter when he offered to repay, the plaintiff refused to accept.

Both the courts on appreciation of evidence have found that the plaintiff does not deserve relief of specific performance. The discretion exercised by the courts below is not shown to be erroneous or perverse.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

28.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No