

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

**RSA No.1096 of 2017 (O&M)**

**Date of decision:27.3.2019**

Pavittar Singh

... Appellant

Vs.

Amarjit Singh and others

... Respondents

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

Present:- Mr. Venu Gopal Jauhar, Advocate and  
Mr. Lalit Sharma, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

**C.M.No.2516-C of 2017**

For the reasons stated in the application which is duly supported by an affidavit, delay of 91 days in re-filing the appeal is condoned.

C.M. stands allowed.

**RSA No.1096 of 2017 (O&M)**

Appellant-defendant no.1 is in regular second appeal against the concurrent findings of fact and law whereby suit of the respondent-plaintiff seeking specific performance of the agreement to sell has been decreed by granting alternative relief.

The respondent-plaintiff instituted the suit on 04.09.2006 for specific performance of the agreement to sell dated 28.01.2006 in respect of land measuring 19 bighas 16 biswas agreed to be sold at the rate of

Rs.3,18,000/- per bigha by receiving the payment of Rs.12.00 lakhs as earnest money stipulating the target date for execution and registration of the sale deed as 15.05.2006.

According to the averments made in the plaint, the plaintiff appeared before the office of the Sub Registrar but the defendants did not turn up, therefore, constrained to file the suit four months thereafter.

The defendants admitted the execution of the agreement but stated that the plaintiff was not willing and ready to perform his part of the contract, therefore, earnest money deemed to have been forfeited. Defendant no.2 claimed himself to be a bonafide purchaser of the land in dispute by way of sale deed dated 23.08.2006 which was executed during the subsistence of the agreement to sell.

The plaintiff in support of the averments examined as many as four witnesses including PW4-Sulinder Singh, Naib Tehsildar/Sub Registrar, Malerkotla, who deposed that he attested the affidavit of the plaintiff on 15.05.2006 and also read over the contents and attesting witness, PW2-Mohinder Pal Singh. On the other hand, defendant no.2 himself appeared in the witness box and deposed that vide sale deed ibid purchased the land measuring 4 bighas for a sum of Rs.10,60,000/- and his brother vide sale deed dated 23.08.2006 and the possession was delivered at the spot.

The trial Court while noticing the aforementioned facts confined the relief to the alternative relief as third party rights had been

created. Two appeals have been preferred which were dismissed.

Learned counsel appearing on behalf of the appellant submitted that Lower Appellate Court while going through the findings did not notice the fact that plaintiff-Amarjit Singh was not ready and willing to perform his part of the contract as his presence was disputed and therefore, could not have upheld the decree of alternative relief, in fact, the suit should have been dismissed in toto, for, during the subsistence of sale, it surfaced that there were two agreements having the same date of 15.05.2006, therefore, the testimony of the Sub Registrar was discarded.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jauhar, for, such defence has not been taken in the written statement, nor an attempt was made to amend the written statement. Statement of PW4 had been very coherent and consistent with regard to the presence of plaintiff-Amarjit Singh.

It is not a case of the defendants or any observations by the Lower Appellate Court that second agreement bearing the same target date was also in favour of Amarjit Singh. This fact was totally ignored by the Lower Appellate Court. In such circumstances, arguments of Mr. Jauhar, have not been able to bring the case within the realm of reversing the decree of the trial Court confining it to the alternative relief of recovery of Rs.12.00 lakhs alongwith interest @ 12% per annum.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)  
JUDGE

March 27, 2019  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |