

RSA-121-2017 (O&M)

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

**RSA-121-2017 (O&M)
Date of decision : 01.03.2019**

Dharambir

... Appellant

Versus

Manoj Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiff claiming specific performance of the registered agreement to sell dated 21.11.2005, was dismissed by the trial Court and affirmed in appeal.

It was alleged that the defendant Nos.1 to 3 entered into agreement to sell, aforementioned, in respect of land measuring 11 kanals 7 marals agreed to be sold @ ₹2,42,000/- against the payment of ₹1,86,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 20.11.2006. The plaintiff stated to have reached the office of sub-Registrar, Hodal, along with balance sale consideration, though an amount of ₹15,000/- in addition to the earnest money was paid, on 13.10.2006, and marked his presence by executing the affidavit, but defendant Nos.1 to 3 did not come forward. It was further pleaded that during the pendency of the agreement to sell, defendant No.3, with an ulterior motive, executed sale deed in respect of 1/3rd share, in favour of defendant Nos.4 and 5, which was without consideration and attempt to

RSA-121-2017 (O&M)

frustrate the performance of the agreement to sell, therefore, the suit, aforementioned, was filed in the year 2008.

Defendant Nos.1 to 3, opposed the suit by filing the joint written statement and denied the execution of the agreement to sell or its existence, much less, receipt of earnest money and additional amount of ₹15,000/-, therefore, the question of appearance before the Sub-Registrar, Hodal, did not arise. The sale deed was executed for a valuable consideration and defendant Nos.4 and 5 were the bona fide purchasers.

Defendant Nos.4 and 5 also took up the same plea in the written statement.

The plaintiff in support of the pleadings examined Ikbal Chand, Vasika Navees as PW1, Bhagwan Singh, RC as PW2, Khyaliram Namberdar as PW4 and himself appeared as PW3 and tendered in evidence many documents. On the other hand, the defendant examined Mewa Ram as DW1, Likhi as DW2, Satbir as DW3 and himself appeared as DW4 and brought on record numerous documents.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjeet Singh, learned counsel appearing on behalf of the appellant, submitted that agreement to sell is a registered document, which carries a presumption of truth. The same was proved through the testimony of PW4, Khyaliram, Namberdar and was scribed by deed writer. The payment of earnest money was also proved, much less, presence before the sub-Registrar. The execution of the sale deed, during the subsistence of the agreement to sell, is an attempt to take away the valuable right, compelling the plaintiff to file the suit in the year 2008. The findings of fact and law by declining the discretionary relief, in such circumstances, is bereft of any

RSA-121-2017 (O&M)

reasons. The defendants failed to prove on record the alleged loan transaction, which was never pleaded.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that the concurrent findings of fact and law arrived at by the Courts below do not call for interference, as the stipulated date for execution and registration of the sale deed was 20.11.2006. The sale deed was post that date, whereas the present suit was filed on 12.11.2008. The readiness and willingness, in the aforementioned case, was conspicuously absent, particularly when the breach alleged to have occurred in November 2007. The defendants examined Mewa Ram, witness of the receipt (Ex.D2), proved that defendant Nos.1 to 3, had taken a loan of ₹1,50,000/- from the plaintiff and as surety to the aforesaid amount, an agreement to sell *ibid* was executed. The loan amount contained the element of interest @ 2% per month. All these factors weighted in the mind of the Courts below.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sanjay Majithia, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

01.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**