

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

RSA No.1769 of 2017 (O&M)

Date of decision:29.01.2019

Baljit Kaur

... Appellant(s)

Vs.

Jaswant Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4278-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 41 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.1769 of 2017 (O&M)

The appellant-plaintiff has not been successful in getting the discretionary relief in a suit for specific performance of the agreement to sell dated 10.12.2007 alleged to have been entered into by the vendor/defendant in respect of land measuring 8 kanals 1 marla agreed to be sold at the rate of Rs.5.00 lakhs per killa against the payment of Rs.2,60,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 09.12.2008 and the suit was filed on 14.01.2009.

The defendant appeared and opposed the suit by stating that agreement was result of fraud and misrepresentation, rather it was a loan transaction. Earlier also defendant entered into an agreement to sell dated 13.06.2007 for loan of Rs.1,50,000/- to be returned as Rs.1,75,000/- alongwith element of interest after a period of six months.

In the replication, the plaintiff admitted that it was an agreement in respect of land measuring 8 kanals 1 marla at the rate of Rs.4.00 lakhs per acre and in the subsequent agreement, rate was increased.

The plaintiff in support of the averments examined herself as PW1, Brij Mohan Sehgal as PW2, attesting witness, Nachhatar Singh as PW3 and deed writer, Sudarshan Kumar as PW4. On the other hand, defendants examined Mandeep Kumar Sharma as DW1 and himself as DW2.

Learned counsel appearing on behalf of the appellant submitted that testimonies of Mandeep Kumar Sharma, DW1 and as well as DW2- Jaswant Singh revealed that party had entered into an agreement to sell as he denied the signatures on the agreement. The denial of the signatures could not prove the plea of loan transaction. Testimony of Mandeep Kumar Sharma, DW1 has also been ignored. In such circumstances, the Courts below ought to have granted the discretionary relief.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mann, for, on going through the cross-examination of the plaintiff handed

over to this Court during the course of hearing, it is revealed that plaintiff had admitted to have entered into frequent money transactions between them. This was the clincher for the Courts below to deny the discretionary relief. For the sake of brevity, relevant portion of the cross-examination of the plaintiff reads thus:-

“I do not remember any specific date or amount when Jaswant Singh received the same from me but there have been frequent money transaction between us. There was no dealing with the defendant prior to 2007.”

In view of what has been noticed above, no ground for interference is made out. The appeal is dismissed. Consequently, the application for additional evidence is also dismissed.

(AMIT RAWAL)
JUDGE

January 29, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No