

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

**RSA No.305 of 2017 (O&M)
Date of Decision.25.01.2019**

Jagir Kaur ...Appellant
Vs
Sarabjit Kaur ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Nayar, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the respondent-plaintiff for specific performance of agreement to sell dated 2.12.2010 has been decreed by both the Courts below.

The respondent-plaintiff sought specific performance of agreement to sell dated 2.12.2010 in respect of the suit land, agreed to be sold for a total sale consideration of ₹1 lakh against the payment of ₹60,000/- as earnest money. 28.02.2011 was fixed as date for registration of the sale deed. However, despite having marked presence by plaintiff, defendant did not turn up.

The defendant opposed the suit by raising preliminary objection of cause of action, concealment of material facts, estoppels etc. and denied to have entered into agreement to sell and receipt of earnest money.

The plaintiff in support of the aforementioned pleadings, examined three witnesses i.e. Sarabjit Kaur as PW1, Partap Singh as PW2 and Gopal Singh as PW3 and brought on record documents Ex.P1 to P4 whereas the defendant examined Jagir Kaur as DW1 and

tendered documents Ex.D1 and D2.

Learned counsel appearing on behalf of the appellant submitted that the plaintiff failed to prove execution of the agreement to sell as well as the readiness and willingness. The site plan was also not correct. The agreement was full of doubt as there were cuttings over the same. The agreement was drafted by deed writer Jasbir Singh but he was not examined.

I am afraid aforementioned argument of learned counsel for the appellant is not sustainable, for, the plaintiff has proved execution of agreement to sell through the testimony of witnesses PW2 and PW3. On the other hand, defendant failed to prove that the agreement to sell was an outcome of fraud or misrepresentation. Readiness and willingness on the part of the plaintiff has been proved to the hilt as the suit was filed on 22.03.2011 and marked presence before the Sub Registrar vide Ex.P3 and P4.

In such circumstances, the discretionary relief granted by the Courts below cannot be said to be suffering from illegality and perversity, much less, no cause of action arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 25, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No