

RSA-3529-2017 (O&M)

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

**RSA-3529-2017 (O&M)
Date of decision : 28.03.2019**

Mata Baksh Singh (deceased) through LRs and another

... Appellants

Versus

Dharampal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the decree of the trial Court confining to the alternative relief of refund of earnest money, has been set aside and the discretionary relief under Section 20 of the Specific Relief Act, 1963 (in short 'the 1963 Act'), has been granted.

The respondent-plaintiff sought the specific performance of agreement to sell dated 27.12.2005, having 4/5th share i.e. 720 sq. yds., in the land measuring 1 kanal 10 marlas comprised in Khewat No.173, Khata No.248, @ ₹2,251/- per sq. yds., for a total sale consideration of ₹16,20,720/-, by fixing the target date as 31.03.2006. One of the condition of the agreement to sell was of dissolution of partnership. It was averred that no steps were taken by the defendants for dissolution, despite repeated requests, thus, was constrained to file the suit in September 2007.

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The defendants opposed the suit and denied the execution of the agreement to sell and it was alleged that Dharampal was mediator, who misused the blank paper by converting into agreement to sell.

In support of the pleadings, the plaintiff examined three witnesses and brought on record Ex.P1 to Ex.P14. On the other hand, the defendants examined seven witnesses and brought on record Ex.D1 to D4.

The trial Court while holding the agreement to sell to be genuine confined the decree to alternative relief by non-suiting the plaintiff being not ready and willing, to file the suit immediate after expiry of the target date, as the suit was filed after one year and six months i.e. in September 2007. The lower Appellate Court, as indicated above, decreed the suit in toto.

Mr. Vikas Mohan Gupta, learned counsel for the appellant submitted that the readiness and willingness is conspicuously wanting as no explanation has come forth in sitting idle for one year and six months. The suit for dissolution was filed in July 2006, which was decreed on 03.11.2009, whereby the appellant acquired 4/5th share, therefore, the suit was based upon the misrepresentation and not maintainable.

I am afraid the aforementioned argument is not maintainable, for, the decree, in the present suit, was filed in 2013, which was in tandem with the terms and conditions of the agreement to sell. As regards the plea of readiness and willingness, there is categoric averments in paragraph 4 to 6 of the plaint, which were not emphatically denied in the written statement as the defendants concededly did not disclose the factum of filing of the suit in the written statement that the suit for dissolution had already been filed. It was a case of predictament of the plaintiff, which could not have been kept

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in abeyance, till the time, the appellant-defendant did not take the decree, which was ultimately taken on 03.09.2009.

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

Resultantly, the second appeal is dismissed.

28.03.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**