

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5272 of 2017 (O&M)

Date of Decision: May 10, 2019

Chamkaur Singh

...Appellant

Versus

Tarlok Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms.Kiranjeet Kaur, Advocate for
Mr. Harpreet Singh Jakhal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Learned counsel appearing on behalf of the appellant submits that despite repeated reminders to the client to apprise the facts, he is not responding.

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff for permanent injunction seeking restraint against the respondent-defendant from causing any interference in the peaceful and exclusive physical possession over land measuring 4 kanals as per jamabandi for the year 2008-09, has been dismissed.

It was alleged that as per the writing, possession was given to the plaintiff of land measuring 4 kanals comprising of Rect.No.180, Killa No.4 min (4-0), but in actual the defendant handed over the possession of Rect.No.177, Killa No. 24(8-0). After taking possession, plaintiff raised the construction on this property by establishing flour-mill. The aforementioned

transaction was in pursuance to the agreement, referred to in the plaint, with regard to the purchase of land measuring 4 kanals for a total sale consideration of ₹ 80,000/-, whereas the defendant had received only ₹30,000/-. Another ₹ 2,000/- was paid by the plaintiff to the defendant and the date was extended to 30.06.1998. On 04.02.1999, defendant assured the plaintiff that he would execute the sale deed and demanded ₹ 10,000/- which was acceded to and paid. Resultantly, ₹ 42,000/- was paid as earnest money. On 17.10.2011, defendant disclosed that he had sold the land mentioned in the agreement to some other person.

Defendant opposed the suit by raising all possible objections, but did not deny the execution of the agreement in favour of the plaintiff. It was stated that due to default on the part of the plaintiff, the agreement was revoked by the defendant and alienated the property to some body else.

Both the parties led evidence.

Learned counsel for the appellant submitted that the suit was basically to protect the possession in terms of Section 53A of the Transfer of the Property Act as the plaintiff was put into possession in terms of the agreement.

I am afraid, the aforementioned argument would not be sustainable, for, the factum of sale in favour of the third party was in the knowledge of the plaintiff. The remedy was to seek specific performance by challenging the sale deed and not injunction as possession has not been proved.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings, which are based on oral and documentary evidence. No ground for interference is made out, much less

involvement of any Substantial Question of Law. Resultantly, the appeal is dismissed.

May 10, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No