

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

**RSA No.5532 of 2017 (O&M)
Date of Decision.02.05.2019**

Mukhtiaro Devi (since deceased) through LRsAppellant

Vs.

Gurmit Singh and othersRespondents

Present: Mr. Sushil Kumar Verma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

Appellants-defendants No.1 to 7 being legal representatives of Mukhtiaro Devi (since deceased) are in regular second appeal against the concurrent finding fact whereby suit for specific performance of agreement to sell dated 11.01.2007 in respect of land measuring 7 marlas being 7/9th share in the total land measuring 9 marlas, agreed to be sold for total sale consideration of ₹60,000/- against the payment of ₹25,000/- as earnest money has been decreed by the Courts below by setting aside the relinquishment deed and sale deed.

The respondent-plaintiff sought the aforementioned relief on the premise that defendants had entered into agreement to sell to be executed on specified date, which was scribed by Satish Kumar deed writer, witnessed by Aaramjit Singh and Ranjit Singh, PW5 and

PW6. But relinquishment deed dated 1.3.2007 was executed by defendant Nos.3 to 7 in favour of defendant No.2 and thereafter vide sale deed dated 8.2.2008, defendant No.2 sold it to defendant No.8.

Defendant No.2 filed separate written statement by raising plea of maintainability, cause of action and on merit, ownership along with remaining defendants 3 to 9 was admitted.

Defendants No.3 to 7 also filed their joint written statement on the lines of defendant No.2.

Defendant No.8 filed separate written statement and claimed herself to be bona fide purchaser as did not have knowledge of the agreement to sell and denied execution of the agreement to sell or receipt of consideration.

Plaintiff in support of pleadings, examined witnesses from the registration department with regard to relinquishment deed and sale deed and Aaramjit Singh and Ranjit Singh, attesting witnesses as PW-5 and PW-6 to prove not only agreement to sell but also passing of consideration. On the other hand, defendants examined two witnesses.

Mr. Verma, learned counsel appearing on behalf of the appellant submitted that facts as noticed above would not have resulted into exercise of discretion under Section 20 of the Specific Relief Act and at the best should have confined to alternative relief, though sale deed could not have been challenged without payment of court fee. There was no sale consideration ever passed, therefore, it was not a case of fraud and misrepresentation.

I have heard learned counsel for the appellants, appraised

the paper book and of the view that there is no force and merit. Tarsem is also signatory of the agreement to sell and of the relinquishment deed dated 01.03.2007 and further intentionally executed sale deed during the subsistence of agreement to sell in favour of defendant No.8, which was an act of fraud and misrepresentation to defeat the right of the plaintiff as well as to make the agreement unexecutable. Plaintiff proved the readiness and willingness as the suit was filed on 27.08.2008. Since the agreement to sell is dated 11.01.2007 and the relinquishment deed dated 01.03.2007 and sale deed dated 8.2.2008 are all during the subsistence of the agreement to sell, therefore, rightly set aside.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 02, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No