

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

**RSA No.5839 of 2017 (O&M)
Date of Decision.25.01.2019**

Hans Raj (deceased) through LRs

...Appellant

Vs

Rurr Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Giri, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming discretionary relief as well as alternative relief in suit for specific performance of agreement to sell dated 5.6.1998 whereby defendant alleged to have agreed to sell the land in dispute. It is submitted that plaintiff had paid the entire sale consideration, however, defendant vendor had sold the land subject matter of the agreement to sell vide sale deed dated 22.07.2009. Legal notice sent was dated 17.11.2009.

The defendant denied the agreement to sell or receipt of the earnest money. Defendant Nos.2 and 3 taken the plea of bona fide purchasers by virtue of the sale deed.

Agreement to sell was stated to be attested by two witnesses. Devi Lal, attesting witness after examination-in-chief appeared for cross-examination but his cross-examination was stated 'nil'. The application moved was also dismissed. The other attesting

witness had died.

On the other hand, defendant examined three witnesses.

Mr. Giri, learned counsel appearing on behalf of the appellants submitted that once the witness of the agreement to sell had appeared and not cross-examined, an adverse inference was liable to be drawn as valuable right had accrued in favour of the plaintiff, in view of payment of earnest money, which has been proved through witness by way of examination-in-chief. Non-examination of other witness was, thus, not fatal to the case. Defendants No.2 and 3 did not bring on record any prior agreement to sell, therefore, cannot be said to be bona fide purchasers.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit. No steps have been taken to examine relative of numberdar as per the provisions of Section 69 of the Indian Evidence Act. If at all, other witness had not come for cross-examination, plaintiff would have taken the chance before the lower Appellate Court. No such effort was made. Even otherwise, readiness and willingness of the plaintiff cannot be said to be existing, for, in the absence of target date, provisions of Article 54 of the Limitation Act would come into play. Legal notice is dated 17.11.2009 whereas the suit was filed on 12.01.2011. No explanation has come forward regarding the readiness and willingness from the date of notice till the filing of suit.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact 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

January 25, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No