

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

RSA No. 5807 of 2018(O&M)

Date of decision: 13.2.2019

Ramphal (since deceased) through his LRsAppellants

VERSUS

Virender and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Virender Rana, Advocate for the appellants.

Mr. Satnam Singh Thakur, Advocate for
Mr. Ankit Gautam, Advocate for the respondent/caveator.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 28.02.2011 in respect of land measuring 16 kanal, detailed in para 2 of the judgment of trial Court was decreed by Additional Civil Judge (Senior Division), Sohna vide judgment and decree dated 10.11.2015 and appeal preferred by unsuccessful defendant No.1 (appellant herein) did not find favour with the Court of District Judge, Gurugram and was dismissed on 15.12.2017.

Counsel for the appellants would argue that the appellant never entered into agreement to sell dated 28.02.2011 for sale of suit land nor he received an amount of Rs.12,00,000/- towards earnest money. It is further argued that the respondent/plaintiff has failed to substantiate his plea that he remained ready and willing to perform his part of the agreement as he has not adduced sufficient evidence to prove that he had

enough funds at his disposal for payment of balance sale consideration of Rs.1,08,000/- with expenses of registration etc.

Perusal of the judgment and decree passed by the trial Court would reveal that both the defendants including the appellants were proceeded against ex parte and as such there is no contest to the averments raised in the plaint and evidence adduced by the respondents to prove the agreement of sale and his readiness and willingness to perform his part of the agreement.

The present appellant is stated to have entered into agreement of sale aforesaid whereas defendant No.2 is the purchaser of land vide sale deed dated 18.04.2011 assailed by the respondent being illegal, null and void and not binding upon rights of the plaintiff to the extent of 16 kanals, agreed to be sold to him. As both the defendants never put in appearance before the trial Court to counter case of the respondent or evidence adduced by him, testimonies of the witnesses examined to prove agreement of sale and so also readiness and willingness of respondent/plaintiff to perform his part of the agreement remains altogether un rebutted and unchallenged.

M/s Inderjeet Real Estate Pvt. Ltd – defendant No.2 has not preferred any appeal against the judgment and decree passed by the trial Court and as a matter of fact defendant No.2 could be the real contesting party in view of the fact that land in question has already been sold by the appellant in favour of defendant No.2 vide sale deed dated 18.04.2011. In view of the above, I do not find an error much less perversity in consistent findings recorded by the Courts, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to performa respondent in case it initiates any proceedings for setting aside the ex parte judgment and decree, in accordance with law. As the appeal has been decided on merits, all miscellaneous applications shall be deemed to be disposed of.

FEBRUARY 13, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no