

RSA-6485-2017 (O&M)

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

**RSA-6485-2017 (O&M)
Date of decision : 21.02.2019**

Piara Singh

... Appellant

Versus

Saru Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Bhardwaj, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-16723-C-2017

For the reasons stated in the application, the delay of 229 days
in refiling the appeal is condoned.

CM stands disposed of.

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The appellant-plaintiff is aggrieved of the concurrent findings
of fact, whereby the suit of the plaintiff for declaration and permanent
injunction has been dismissed by the trial Court and affirmed by the lower
Appellate Court.

The plaintiff instituted the aforementioned suit on the premise
that defendant No.2, his brother, had entered into agreement to sell by
executing the attorney and Will, as the entire sale consideration was paid to
him. Defendant No.1 is none-else, but wife of defendant No.2. There was a

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matrimonial dispute and marriage was dissolved on 31.10.2000 and before that, defendant No.2 had executed the sale deed dated 07.09.1999, in favour of defendant No.1. She was a licensee of the plaintiff and was directed to vacate and therefore, injunction was sought including the damages to the tune of ₹10,000/- per month from the date of termination of the license till delivery of the possession.

Mr. Deepak Bhardwaj, learned counsel appearing on behalf of the appellant-plaintiff submitted that the execution of the agreement to sell, power of attorney and Will, was in fact a contract of sale as per the provisions of Section 202 of the Indian Contract Act, recognized in law. Defendant No.2 breached the trust deposited by the plaintiff, though they are related to each other, as brothers. It was an attempt by defendant No.2 to thwart the right, by execution of the power of attorney, in favour of defendant No.1. The Courts below remained oblivious that the plaintiff, was made to part with, the entire sale consideration, at least confined the decree for refund of the amount.

I am afraid the aforementioned arguments are not sustainable in the eyes of law as the remedy for the plaintiff, in case, time was not essence of the agreement to sell, to claim the relief of specific performance under the Specific Relief Act, but not in the manner and mode, as the agreement to sell do not confer any title. Having failed to avail the actual remedy, declaration and injunction could not have been granted. It is not decipherable whether defendant No.2, had executed the sale deed in favour of defendant No.1, in discharge of the obligation either as a permanent alimony or otherwise.

In this view of the matter, I do not find any illegality and

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perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

21.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**