

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

RSA No. 9789 of 2018(O&M)

Date of decision: 4.9.2019

Madan Lal

.....Appellant

VERSUS

Gurnam Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ritesh Pandey, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 01.04.2009 in respect of *gair mumkin* plot measuring 8½ marlas, detailed in headnote of the plaint, was decreed by the trial Court vide judgment and decree dated 29.08.2014 that came to be affirmed in appeal by the Additional District Judge, Gurdaspur vide judgment and decree dated 19.09.2017.

The sole submission made by counsel for the appellant is that the respondent/plaintiff has failed to satisfy the requirements of Section 16(c) of the Specific Relief Act, 1963 as she has failed to aver and prove that she always remained ready and willing to perform her part of the agreement. To bring home his contention, it is argued that in the plaint, though there is averment that the respondent always remained ready and willing to perform her part of the agreement but she has not averred that on the date fixed for performance of contract i.e. 05.05.2009 she had the

balance sale consideration of Rs.80,000/-. In addition, it is argued that even in the affidavit executed by the respondent in respect of her presence in the office of Sub Registrar on the stipulated date, there is no mention that she had brought the balance sale consideration along with expenses required for registration etc. It is vehemently argued that the respondent/plaintiff was obligated in law to allege that money payable by her was available with her when contract was to be performed. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, 2010(1) SCC 512.**

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Apart from the fact that there is delay in filing and re-filing the appeal, the appeal sans merit and deserves to be dismissed.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to note that findings recorded by the Courts cannot be interfered with unless the same suffer from perversity or based upon materials alien to records or result of failure to appreciate the material on record that has strong bearing qua decision on merits.

In the case at hand, there was a specific plea raised by the respondent/plaintiff that she always remained ready and willing to perform her part of the agreement. She was present in the office of Sub Registrar on the stipulated date i.e. 05.05.2009 and got her presence marked. There is no requirement in law that the vendee must get an affidavit attested with regard to presence in the office of Sub Registrar. Such a step is taken by the vendee to prove his/her presence in case of litigation between the

parties. As such, it is difficult to accept contention of the appellant that merely because the affidavit executed by the vendee in respect of her presence in the office of Sub Registrar does not make reference of her having brought balance sale consideration would either cause prejudice to claim of the respondent or enure to benefit of the appellant/defendant.

Counsel for the appellant has failed to point out any materials elicited in cross examination of Gurnam Kaur in respect of her not having balance sale consideration and expenses of registration etc on the target date i.e. 05.05.2009. Counsel for the appellant tried to derive some advantage of headnote B of the judgment in **Man Kaur's case** (supra) but when findings of the Court in para 23 of the judgment are read in extenso, he is unable to substantiate his plea that the vendee is obligated in law to aver that money payable by him was available with him when contract was to be performed. In this view of the matter, the appellant cannot derive any advantage to his contention from the referred authority.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 4, 2019

'D. Gulati'

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no