

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

RSA No.4854 of 2019(O&M)

Date of decision: 7.2.2020

Charanjit SinghAppellant

VERSUS

Kamal Sarna and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.P. Kaushal, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for specific performance of oral agreement to sell, later executed by the respondents/defendants duly signed by defendants No.2 and 5 on behalf of the defendants on 19.08.2010 for sale of property measuring 140 square yards bearing municipal No.B-VIII-625-626 situated at Nawan Mohalla, Ludhiana, detailed in headnote of the plaint was partly decreed by the trial Court against Narinder Kumar – defendant No.2 and Prag Raj – defendant No.5 and they were restrained from transferring or alienating more than their share. The appeal preferred by unsuccessful plaintiff qua rejection of his claim for specific performance of agreement in respect of share of defendant No.1, 3, 4, 6 to 9 was dismissed by the Additional District Judge, Ludhiana vide decree and judgment dated 26.03.2018.

Counsel for the appellant has assailed concurrent findings in respect of rejection of his claim against the aforesaid defendants primarily

on two counts. It is argued that there can be an oral agreement for sale of immovable property and as such even if the agreement to sell dated 19.08.2010 was not signed by defendant No.1, 3, 4, 6 to 9 or defendants No.2 and 5 were not authorized by the said defendants to sign the agreement on their behalf, the appellant has wrongly been denied the relief of specific performance qua the entire property on the basis of oral agreement to sell. Another submission made by counsel is that as per the agreement dated 19.08.2010 Ex.P2 out of earnest money of Rs.1,75,000/-, share of aforesaid defendants No.1, 3, 4, 6 to 9 was also paid vide different drafts, reference whereof has been made in the agreement of sale. It is further submitted that those defendants never raised an issue as to why the amount of their share in the earnest money has been remitted to their account and probably the said amount must have been utilized by them.

I have heard counsel for the appellant, perused the paper-book and records.

Apart from the fact that appeal has been filed after delay of 495 days, the same is devoid of merit and deserves to be dismissed. Indisputably, the agreement dated 19.08.2010 signed by Narinder Kumar and Prag Raj Makin does not make reference to any oral agreement having been entered between the appellant and all the co-owners of the suit property. Perusal of the document reveals that besides the names of Prag Raj Makin and Narinder Kumar Makin, the names of other co-owners have been mentioned under the title 'sellers' (baayan) but they have not signed the same. There is no explanation much less satisfactory tendered by the appellant/plaintiff that if defendants No.1, 3, 4, 6 to 9 had actually entered into agreement for sale of suit property even in respect of their shares, why the agreement dated 19.08.2010 was not got signed from them either by

the appellant or by Sh. Narinder Kumar and Prag Raj Makin. The mere fact that the appellant got prepared bank drafts of the value of Rs.25,000/-, Rs.15,000/- and Rs.5000/- etc. even in the names of defendants No.1, 3, 4, 6 to 9 keeping in view their share in the suit property and earnest money of Rs.1,75,000/- referred to in the agreement, it does not prove that defendants No.1, 3, 4, 6 to 9 had agreed to sell their share in the suit property and appellant has wrongly been denied relief of specific performance against the aforesaid defendants.

There is no dispute about settled position in law that concurrent findings recorded by the Courts can be intervened if the same suffer from perversity or raised a question of law that needs determination in second appeal. However, counsel for the appellant has failed to successfully make out a case for intervention when examined in view of the aforesaid.

Before parting with this order, it is pertinent to note that counsel for the appellant has raised a plea that immovable property can be agreed to be sold through an oral agreement of sale. There is no quarrel with the settled position in law that agreement can be oral or in writing. However, in view of the above, I do not find any reason to interfere in concurrent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

February 7, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no