

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

RSA-2431-2004 (O&M)

Date of decision: 23.11.2022

Inderjit Singh

....Appellant

Versus

Swaran Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sahil Soi, Advocate for the appellant

Mr. Tribhuwan Singla, Advocate for respondent no.1

Mr. Ramesh Sharma, Advocate for respondent no.2

ANIL KSHETARPAL, J (Oral)

1. While assailing the concurrent findings of fact arrived at by the trial court as well as the First Appellate Court, the plaintiff has filed the present appeal. His suit for decree of declaration that he is an owner in possession of 1 kanal and 10 marlas of land, on the basis of a civil court decree dated 14.01.1993, has been dismissed by both the courts below.

2. Relevant facts, in brief, are noticed as under:-

3. Sh.Gurpal Chand, was the owner of the property. The plaintiff alleges that Sh.Gurpal Chand entered into an agreement to sell with him on 09.01.1991. It is alleged that Sh.Gurpal Chand entered yet another agreement to sell the suit property in favour of defendant no.1 on 05.08.1991. The plaintiff filed a suit for specific performance of the agreement to sell whereas defendant no.1 also filed a separate suit for specific performance of the agreement to sell. The plaintiff and defendant no.2 entered into a settlement resulting in decree for specific

performance of the agreement on 14.01.1993, whereas the suit filed by defendant no.1 was decreed on 20.07.1996. Through the present suit, the plaintiff challenges the correctness of the judgment and decree dated 20.07.1996. In substance the plaintiff claims that the agreement to sell dated 05.08.1991 is a result of fraud and collusion between the respondent no.1 and 2. It may be noted here that the plaintiff has not produced in evidence the agreement to sell in his favour or any other evidence to prove that the agreement was entered into between defendant no.2 Sh.Gurpal Chand and the plaintiff on 09.01.1991. Thus, both the courts dismissed the suit.

4. Before the First Appellate Court, the plaintiff filed an application for permission to lead additional evidence in order to produce a copy of the judgment passed by the court. On the basis of settlement and the agreement to sell, two sale deeds executed pursuant to the decree for specific performance, the First Appellate Court dismissed the same.

5. This appeal is pending for the last 18 years. Even if the documents which are sought to be produced, in additional evidence, are permitted to be led, though the appellant is not entitled thereto, still the evidence sought to be led in additional evidence is not sufficient to prove his case. In the present case, the plaintiff was required to prove that there was a genuine agreement to sell between Sh.Gurpal Chand and him on 09.01.1991. For that, he was required to prove that on 09.01.1991 there was a genuine transaction between him and defendant no.2. The plaintiff should have produced a copy of the diary maintained by the

professional scribe, in order to prove that in fact the aforesaid agreement was actually entered on 09.01.1991.

6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

23.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE