

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

RSA-3851-2019 (O&M)

Date of Decision: August 28, 2023

CHANDER BHAN

..... Appellant

Versus

POONAM DEVI

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. J.P. Sharma, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to judgments and decrees dated 11.02.2016 and 06.04.2019 passed by the Courts below whereby suit for possession by way of specific performance filed at the instance of respondent-plaintiff has been decreed.

2. Very briefly, based on agreement to sell dated 29.11.2013, regarding 5 kanals and 11 marlas of land situated in revenue estate of Village Morund, Tehsil and District Narnaul, suit for possession by way of specific performance was filed by the respondent-plaintiff. It was further pleaded that sale consideration was Rs.15,00,000/- per acre, out of which Rs.7,00,000/- was paid as earnest money at the time of execution of agreement to sell dated 29.11.2013 with 27.12.2013 being the target date.

3. Upon notice, the appellant-defendant appeared and disputed the claim setup by the respondent-plaintiff while submitting that document in question was created merely as a security against some loan.

4. The trial Court vide judgment and decree dated 11.02.2016 dismissed the suit filed by respondent-plaintiff. Aggrieved thereof, First Appeal was filed, the same was also dismissed by the First Appellate Court.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that the Courts below went wrong while ignoring the evidence brought on record whereby it was sufficiently established that the document in question was in fact a security document and not an agreement to sell.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellant.

7. In view of the case set up by the parties as per their pleadings, there is no dispute regarding execution of the document dated 29.11.2013, except for the same being either agreement or a security document. The respondent-plaintiff in order to prove his case has examined both the marginal witnesses to the agreement to sell dated 29.11.2013 as PW1 and PW2, besides examining the scribe as well as the stamp vendor as PW4 and PW5 so as to prove the document, in question, to be an agreement to sell. Perusal of the two judgments show that the appellant has not been able to impeach the deposition made by the aforementioned witnesses. Moreover, the respondent has also established on record that even on a previous occasion the appellant-defendant alienated a portion of his property in favour of respondent-plaintiff. On the contrary, no evidence has been

produced on record so as to establish that the document dated 29.11.2013 was in fact a security document prepared against some loan obtained by appellant-defendant from respondent-plaintiff.

8. Nonetheless, a concurrent finding of fact has been recorded by both the Courts below as regards the nature of the document in question to be an agreement to sell, besides sufficient proof of readiness and willingness on the part of respondent-plaintiff, while granting decree for possession by way of specific performance and nothing material has been pointed out to show that there has been any misreading of evidence or any evidence has been ignored by the Courts below or any inadmissible evidence has been taken into consideration while arriving at the conclusion.

9. In view of the aforesaid, finding no merits in the present appeal as well as there being no illegality or perversity in the judgments passed by the Courts below, the present appeal is dismissed.

28.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>