



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

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RSA 5023-2015

Date of decision September 04, 2024

*Pritam Singh**..... Appellant*

vs

*Mohinder Kumar Bhardwaj and another**.....Respondents***Coram: Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Vishal Aggarwal, Advocate
for the appellant

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Rajbir Sehrawat, J. (Oral)

1. The present appeal has been filed, challenging the concurrent judgments, decrees and the findings recorded by both the Courts below, whereby the suit for specific performance preferred by the present appellant/plaintiff has been dismissed by the trial Court and the appeal filed by him has also been dismissed by the lower Appellate Court.

2. The brief facts, as involved in the present case are that the appellant/plaintiff filed a civil suit for specific performance of agreement to sell dated 12.10.2005 qua property in dispute, alleging therein that the defendant had sold the property in dispute to the appellant/plaintiff; as fully described in the headnote of the civil suit. The defendant agreed to sell the property in dispute to the appellant/plaintiff vide agreement to sell dated 12.10.2005 for a sum of Rs.4,00,000/- as full and final sale consideration. The said consideration was duly paid by the vendee-



appellant in the presence of the witness Bhupinder Singh (PW2) at the time of execution of agreement to sell itself. Even the vendor delivered the possession of the property to the appellant at the time of agreement to sell dated 12.10.2005. However, the vendor did not come present for execution of the sale deed on the targeted date; which ultimately culminated in filing of the civil suit.

3. Having appreciated the material evidence led by the parties, the trial Court dismissed the suit filed by the appellant/plaintiff vide judgment and decree dated 21.05.2014. Aggrieved against the same, the appellant filed the appeal. However, the appeal preferred by the appellant also met the same fate. Accordingly, the present appeal has been filed.

4. Arguing the case, counsel for the appellant has submitted that both the Courts below have wrongly recorded a finding that no consideration was paid to the vendor. In-fact, the entire amount was paid to the vendor on the date of agreement to sell; and that too; in the presence of the witness, namely, Bhupinder Singh (PW2). To prove the factum of payment of money the appellant has duly examined this witness. Therefore, the Courts below are not justified in recording the said findings. Counsel for the appellant has further submitted that the issue qua making of payment of consideration for the aforesaid property was only between the plaintiff-vendee and the vendor. However, the vendor did not even come present in the suit despite being served. Therefore, the assertion made by the appellant qua payment has gone totally un-rebutted. In fact, the vendor had got dishonest after getting the payment of Rs.4,00,000/-



being the sale consideration. Accordingly, subsequently, he sold the property in question to respondent No. 2 (Gurjit Singh). Since agreement to sell dated 12.10.2005 in favour of the appellant was prior in time, therefore, the suit filed by the appellant should have been decreed by the Courts below. No other argument has been raised.

5. Having heard counsel for the appellant and having perused the case file, this Court finds that the reliance of the appellant to prove the factum of making payment to the vendor was wholly upon witness, namely, Bhupinder Singh (PW2). However, there is not even any receipt allegedly got signed from the vendor, which could have been placed on record by the appellant to substantiate his claim. The payment of money, unless admitted, has to be a matter of documentary evidence. Otherwise also, it is not probable that a person, who is paying the entire sale consideration just on the asking of the vendor does not even insisted upon obtaining any receipt for the same from the vendor. Therefore, this Court does not find any illegality and perversity in the findings recorded by both the Courts below. Moreover, the property in dispute already stood sold to respondent No. 2 through a valid sale. There is not even any material on record to show that the subsequent purchaser had any knowledge qua the alleged prior agreement to sell arrived at between the appellant and the vendor in question. Therefore the subject matter of agreement in favour of the appellant does not exist as a sale-able property any more.

6. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the



Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

7. Resultantly, finding no merit in the present appeal, the same is dismissed.

8. The pending miscellaneous application (s), if anyh is also disposed of as such.

(Rajbir Sehrawat)
Judge

September 04, 2024
mohan bimbura

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No