

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.501 of 2011 (O&M)
Date of Decision: 11.05.2015**

Nasib Chand

..... Appellant

Versus

Nanjoo Ram

..... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.D.S. Sodhi, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

CM No.1350-C of 2011

For the reasons stated in the application, the same is allowed and the delay of 8 days in refiling the appeal is condoned.

CM No.1351-C of 2011

CM is allowed for making up deficiency in payment of Court Fee. Removal of deficiency, though later, was curable and would relate back to the date of filing of the appeal, by enlargement of time.

Main case

This is defendant's second appeal. The defendant is the vendor. He agreed to sell his land to the plaintiff by a written contract and then backed out of the deal. The learned trial Court partially decreed the suit. It did not grant decree of specific performance but ordered refund of earnest money. The plaintiff aggrieved by denial of right to transfer of land by registration of sale deed preferred an appeal under Section 96 CPC before

the First Appellate Court which has reversed the finding of the learned trial Court which denied to the plaintiff a decree for possession by way of specific performance and limited relief to refund of earnest money. The suit was decreed in toto against which the second appeal was filed in 2011 against the appellate decree dated June 01, 2010 passed by the learned District Judge, Kapurthala which has remained pending admission hearing since without any effective proceedings except adjournments sought from time to time.

The only defence taken in appeal by Mr Sodhi is that vendor was allotted the disputed property by Government being a member of the scheduled caste community in terms of a scheme to settle landless Harijans on public land. If he did not have the right to sell then the agreement to sell was a voidable transaction, if not void. However, the learned Appellate Court did not accept the defence for the simple reason that no evidence was produced by the defendant to prove the fact that there was prohibition against sale in the scheme of allotment and, therefore, the property could not be legally conveyed by a conveyance deed involving the suit property. In absence of any documentary evidence, the First Appellate Court did not rely on the oral testimony alone of the defendant's witnesses which were self-serving to the interest of the defendant. In absence of both oral and documentary evidence to prove the only defence taken against the decree, no question of law, much less a substantial one arises in the present appeal warranting admission of the matter. Mr Sodhi cannot deny that the defendant did not plead the defence of hardship in his written statement or produce any evidence that in case the decree of possession by way of

specific performance is passed he would suffer undue hardship and be rendered a person landless and homeless and therefore monetary compensation to the plaintiff would suffice.

No ground warranting interference is made out in the judgments and decrees of the courts *a quo*.

The appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

11.05.2015
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