

Application is accordingly disposed of.

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Main case

This judgment of mine will dispose of RSA No. 4436 of 2012 and RSA No. 4691 of 2012, titled as Kakka Singh Versus Diwan Singh, arising out of the same judgment and decree dated 23.5.2012, passed by the learned Additional District Judge, Fast Track Court, Jalandhar, vide which the cross appeals filed by both the parties against the judgment and decree dated 16.12.2010, passed by the learned Additional Civil Judge (Senior Division), Nakodar, were dismissed with the modification that the appeal filed by the defendant-Diwan Singh was partly accepted and in place of recovery of rupees four lacs, recovery of rupees two lacs with interest at the rate of 9 % per annum from the date of execution of agreement till today i.e. 23.5.2012 and 6% per annum interest from today (i.e. 23.5.2012) till realization on rupees two lacs was allowed.

Briefly stated, the parties entered into an agreement dated 27.12.2007 to sell the possessory rights of disputed property in favour of the plaintiff by the defendant, which is owned by the Central Government. The total sale consideration was rupees four lacs and twenty five thousand, out of which rupees two lacs were paid as earnest money and rest were to be paid on 29.7.2008 when the possession was to be delivered to the plaintiff on receipt of remaining amount.

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Defendant in written statement took the stand that plaintiff and his father are travel agent by profession. They promised to send the defendant abroad and received rupees three lacs from defendant. They also obtained thumb impression of defendant on blank stamp paper. They not only failed to send the defendant abroad but also failed to return the amount and his documents. It was stated that the said documents might have been converted into agreement. The lower Court held that the agreement has been proved, but it was found that this disputed property is owned by the Central Government and defendant is in possession of it only as *gair marusi*. The lower Court also observed that perusal of agreement (Ex.P1), affidavit (Ex.P2) and cross examination of the plaintiff show that the plaintiff intended to purchase the disputed property and not possessory rights only. The plaintiff had termed the agreement as agreement for sale in his affidavit (Ex.P2). Therefore, the specific performance was refused. However, rupees two lacs paid as earnest money and rupees two lacs as penalty and damages were ordered to be granted.

Both the parties were not satisfied with the said judgment and decree and preferred cross appeals, in which the order of the lower Court, refusing the specific performance of agreement, was upheld and in place of damages of rupees two lacs, earnest money

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with interest was ordered to be granted. Against the separate judgments of the appellant Court, two separate appeals have been filed by the plaintiff before this Court.

I have heard the learned counsel for the appellants and have also carefully gone through the file.

Both the Courts below have refused the specific performance of agreement on the ground that the intention was to sell the land.

After going through the judgments and decrees of both the Courts below, I am of the view that the disputed property is owned by the Central Government and plaintiff is a *gair marusi* i.e. in authorised possession in the said land. Through the agreement, he wanted to sell the possessory rights. I am of the view that in these circumstances when the plaintiff wanted to sell his *gair marusi* rights to the defendant, the Central Government was necessary party as the owner must know that the possession of the land owned by it is being transferred. In these circumstances, even though the agreement has been proved, both the Courts below rightly exercised the discretion to refuse the specific performance of the agreement. The damages mentioned by the parties in the agreement are the maximum, which could be awarded by the Court. Therefore, there is nothing wrong, if the lower appellate Court in place of the damages,

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awarded the interest on the earnest money. It being so, there is no illegality or infirmity in the impugned judgments and decrees, passed by both the Courts below. Therefore, no substantial question of law arises in the present appeals. Hence, both the appeals are dismissed.

(KULDIP SINGH)
JUDGE

13.10.2015
sjks