

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

**RSA No. 3130 of 2015 (O&M)
DECIDED ON: OCTOBER 20, 2015**

KRISHAN DEV

.....APPELLANT

VERSUS

NANAK CHAND AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present:- Mr. Bir Davinder Singh, Advocate
for the appellant.

JASPAL SINGH, J

Instant appeal has been preferred by Krishan Dev-appellant-respondent No.1 against the judgment and decree dated October 10, 2013 passed by learned Civil Judge (Jr. Division), Ferozepur whereby, the suit for possession preferred by Nanak Chand-plaintiff-respondent No.1 by way of specific performance was decreed in his favour which was also affirmed by lower Appellate Court vide judgment and decree dated May 31, 2015.

2. Briefly stated the facts giving rise to the instant case are that respondent No.1-plaintiff filed a suit for possession by way of specific performance of agreement of sell dated October 3, 2004 executed by

appellant/defendant No.1 in his favour in respect of built up house situated at Gobind Nagri, Ferozepur City, Tehsil and District Ferozepur and for declaration that sale deed dated February 1,2005 bearing Wasika No. 7305 in respect of the house in question executed by appellant/defendant No.1 in favour of defendant No.2 is illegal and null and void, inoperative upon his rights and in the alternative for the recovery of Rs. 3 lacs (2 lacs paid as earnest money plus Rs.1 lac as damages) along with consequential relief of permanent injunction from restraining respondent No.2/defendant No.2 from alienating the house in question to any other person.

3. The suit was resisted by appellant/defendant No.1 as well as defendant No.2 before learned trial Court as well as in the lower Appellate Court. Ultimately, suit of plaintiff/respondent No.1 was decreed by the judgment and decree dated October 10, 2013 passed by learned trial Court in the alternative for the recovery of sum of Rs.3 lacs. Respondent No.1/plaintiff preferred an appeal against the aforesaid judgment and decree. The lower Appellate Court also did not accept the plea of respondent No.1/plaintiff for decree by way of specific performance instead awarded an interest @ 9% per annum, vide impugned judgment and decree dated March 31,2015 passed by lower Appellate Court, on the decretal amount of ₹3 lacs with effect from October 31, 2005 till its actual realization.

4. Feeling dissatisfied with the judgments and decree rendered by both the Courts below, appellant/respondent No.1 has approached this Court by way of instant appeal.

5. The only contention put forth by learned counsel for the

appellant is that learned lower Appellate Court without appreciating the facts and evidence on record partly accepted the appeal filed on behalf of respondent No.1-plaintiff wrongly awarded an interest @ 9% per annum on the decretal amount of Rs.3 lacs. There was no such claim or prayer with regard to the grant of interest made by respondent No.1/plaintiff before learned trial Court. Thus, while awarding interest @ 9% per annum, lower Appellate Court has travelled beyond its jurisdiction.

6. In the given circumstances, only question which survives for consideration is whether the awarding of interest @ 9% per annum, therebeing no pleading/ prayer in this regard is justified? The answer to this question in view of facts and evidence available on record is in affirmative. It is amply proved on record that appellant/defendant No.1 entered into an agreement to sell dated October 3, 2004, on receipt of a sum of ₹2 lacs out of total consideration of ₹3 lacs but he did not execute the sale deed as per terms and conditions thereof. Rather, the suit property was sold by him vide sale deed dated February 1, 2005 to defendant No.2 which created hurdle in getting the sale deed executed by respondent No.1 and he had to knock the doors of civil Court. He was constrained to file a suit for specific performance as well as for cancellation of sale deed allegedly executed by appellant/defendant No.1 in favour of defendant No.2. Defendant No.2 availed and enjoyed an amount of Rs. 2 lacs since the date of execution of agreement of sale. Even otherwise law does not recognize unjust enrichment by a party.

7. It would also be pertinent to mention here that today a query

was put to be learned counsel for the appellant as to whether appellant has made the payment of decretal amount or any part thereof, or that he is ready to deposit either the whole or some part of the decretal amount and ultimately, the answer came that appellant is not ready to deposit the amount, as he is not in a position to make the payment thereof. Thus, if interest has been awarded on the amount assessed and decreed by the courts below, that cannot be termed to be unjustified.

7. In the light of aforesaid discussions, this Court does not find any merit in the instant appeal. As such the same is dismissed.

(JASPAL SINGH)
JUDGE

OCTOBER 20, 2015
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