

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

RSA No.1309 of 2014(O&M)
Date of Decision: 09.02.2015

Ajit Singh

.....Appellant

Vs.

Kashmir Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present:- Ms.Rupinder K.Thind, Advocate for the appellant.

MAHAVIR S. CHAUHAN, J. (ORAL)

Challenge in this regular second appeal brought by one of the defendants Ajit Singh is to the judgment/decreed dated 05.02.2013 passed by learned District Judge, Amritsar (for short 'the first appellate Court') whereby judgment/decreed dated 1.10.2011 passed by learned Civil Judge (Junior Division), Amritsar (for short 'the trial Court') decreeing suit of first respondent-Kashmir Singh for an alternative relief of recovery of amount of earnest money, has been affirmed.

Though the appeal is barred by time but I have heard learned counsel for the appellant on merits.

Case of the plaintiff before the courts below was that defendant No.1 was owner in possession of the suit plot and vide agreement dated 03.12.1998 had sold it to defendant No.2 after receipt of entire sale consideration and also delivered possession thereof to him. Defendant No.2 on the basis of aforesaid agreement, however, agreed to sell the suit plot to the plaintiff vide

agreement dated 31.03.2005 for a consideration of Rs.22,000/-. However, said defendant did not execute and get registered the necessary sale deed, even though the plaintiff has been ready and willing to perform his part of agreement. Even a legal notice served upon the second defendant in the matter remained ineffective. Suit was contested by the defendants. Necessary issues were framed. Parties adduced evidence and the learned trial Court on appreciation of evidence and in the light of submissions made at the Bar came to a definite conclusion that defendant No.2 was not competent to execute the agreement to sell and as such its specific performance could not be ordered but at the same time defendant No.2 could not be allowed to retain the amount of earnest money. Accordingly, suit was decreed for recovery of Rs.22,000/- along with interest @ 9% per annum, vide judgment and decree dated 01.10.2011.

Judgment/decreed dated 01.10.2011 has been upheld by learned first appellate Court vide judgment/decreed dated 05.02.2013 rendered in Civil Appeal No.46 of 2011.

The only submission made on behalf of the appellant is that the trial Court having failed to frame an issue for alternative relief, alternative relief could not be granted but both the courts have granted alternative relief despite holding that the appellant was not competent to enter into agreement to sell.

The submission, in my view is devoid of any substance because grant of an alternative relief instead of specific performance of agreement to sell is in the discretion of the Court and as regards the other contention that the appellant was not competent to enter into the agreement to sell and, therefore, the

suit of the plaintiff could not be decreed suffice it to say that as the

appellant has failed to rebut the case of the plaintiff that he had paid an amount of Rs.22,000/- to him as earnest money in view of the agreement to sell dated 31.3.2005, there is no reason to allow the appellant to retain this amount.

No other point has been raised.

In view of the above, coupled with the fact that this appeal is not shown to involve any question of law, much less a substantial one, I regret my disinclination to interfere with the concurrent and pure findings of fact recorded by the Courts below.

Dismissed.

No costs.

(MAHAVIR S. CHAUHAN)
JUDGE

09.02.2015

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