

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

Regular Second Appeal No.2449 of 2014 (O&M)

Date of decision: 14.7.2015

Hawa Singh

... Appellant

Versus

Jage Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjay Mittal, 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)

Both the courts below have declined specific relief and the appellant is satisfied with that part of the decree since he was the defendant vendor and continues to retain the suit property. However, there appears to be no doubt on the evidence adduced and duly appreciated by the lower courts that the plaintiff-appellant had lent money to the defendant and the transaction was not an intention to part with property but a deal to secure the loan. Therefore, the court a quo held that a suit for specific performance would not lie in the proven facts and circumstances of the case. When it is established on file that the consideration was security for loan then the element of sale was not present in the transaction and suit could not be ~~decree~~ **decree**ed for specific performance of an alleged agreement of sale.

Nevertheless, while declining the main relief, the courts have decreed the suit partially for refund of money and have granted interest @ 12% on the loan amount from the date of sale agreement, i.e., from May 3, 2001 which appears to be fair, just and equitable as it could not be disputed that money was taken by the defendant from the plaintiff as loan.

It may be noted that the total alleged sale consideration under the agreement of sale was ₹ 1,47,000/- for agricultural land comprising 10K-2M in the year 2001 and after 14 years of litigation there has been steep rise in prices of property and the defendant has gained with the dismissal of the suit on the main relief. In order to balance out the equities between the parties in suitable equipoise it is in the fitness of things that money should be returned to its rightful owner who should not be compelled to recover it in a fresh suit. In any case, the plaintiff was prosecuting his case, rightly or wrongly, for possession by way of specific performance and by the very nature of the litigation could not have asked for interim or final refund of money and to be heard at the same time still to insist on a full decree of specific performance. Thus, the plaintiff is well within his right to retain the partial decree and claim under it.

Mr. Mittal lastly submits that the suit was filed on December 24, 2005 and, therefore, allowance should be made for the period from 2001 to 2005 and no interest should run on that amount for the period since the claim is barred. I am afraid, the argument based on principles of limitation in a suit for recovery are not applicable in a case for possession by way of specific performance of property in which an alternative prayer has been made for refund of the amount of partly paid towards sale consideration.

Both the courts below have committed no error in ordering refund of the amount with 12% interest from the date of the sale agreement i.e. from May 3, 2001. I would, therefore, not think it justified to interfere in the orders passed by the courts a quo in jurisdiction this Court exercises in the second appeal and without there being a substantial question of law involved in appeal.

For the reasons stated above, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 14, 2015
Paritosh Kumar