

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

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RSA 2025 of 2009 (O&M)
Date of decision: 25.01.2016

Tek Chand and others

.....Appellants

Versus

Karey and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rakesh Nehra, Advocate
for the appellants

Mr. Naveen Kaushik, Advocate
for the respondents

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 19.12.2008 passed by the District Judge, Faridabad whereby the judgment and decree dated 05.11.2007 passed by the trial Court has been affirmed.

Facts relevant for disposal of the present appeal are that the appellants filed a suit for possession of agricultural land equal to the land mentioned in para 1 of the plaint and in the alternative for damages on account of breach of contract dated 20.10.1986, sale deeds dated 03.01.1989 and dated 04.09.1989. The suit filed by the appellants for possession of the land was dismissed by the trial Court, whereas the suit is partly decreed qua

recovery of sale consideration of Rs.37,800.00 in regard to sale deed executed on 03.01.1989 by defendants No. 2 to 4 in favour of plaintiffs No. 1 to 3, sale deed dated 04.09.1989 executed by defendant No. 4 in favour of plaintiff No. 4 for sale consideration of Rs.18,000.00 and sale deed dated 04.09.1989 executed by defendants No. 2 to 4 in favour of plaintiffs No. 1 to 3 for sale consideration of Rs.16,500.00. The appellate Court affirmed the findings of the trial Court so far as entitlement of the appellants to recover the amounts decreed in favour of the appellants but they were further held entitled to interest @ 7.5% from the date of institution of the suit till realization.

The sole submission made by counsel for the appellants is that the Court in appeal committed an error by not allowing interest with effect from the date the payment was made by the appellants, either at the time of agreement (s) of sale or at the time of registration of sale deeds. It is vehemently argued that the appellants are entitled to get interest from the date of payment till realization thereof.

Counsel for the respondents, on the contrary, has supported the judgment passed by the Court in appeal with the submissions that the appellants have been rightly allowed interest from the date of filing of the suit i.e. *pendent lite* and further interest, in the circumstances of the case.

I have heard counsel for the parties and perused the records.

The substantial question of law that arises for adjudication is *‘whether the appellants are entitled to interest on the amounts paid by them on the basis of agreement/sale deeds with effect from the date the payment was made?’*

It is an admitted position of the case that an agreement dated 08.12.1986, was entered into between Karey-respondent/defendant No. 1 and Deep Chand. A suit for specific performance of the contract was filed by Deep Chand alleging that in order to avoid sale deed, Karey has suffered a consent decree and passed on property to his son. The suit filed by Deep Chand was dismissed but he was successful in appeal. The judgment and decree passed by the appellate Court was maintained upto the Apex Court. It was held that the agreement dated 20.10.1986 in favour of Tek Chand and others was shrouded by suspicious circumstances and sale deeds executed by the defendants and his sons were prepared to frustrate the agreement in favour of Deep Chand.

The appellants/plaintiffs filed the present suit after decision of the appeal by the Apex Court. It is their plea that since Tek Chand could not get the land agreed to be sold to him, he is entitled to another piece of land and in the alternative a claim was made for payment of compensation. The learned trial Court accepted the plea of the appellants for recovery of the amounts paid by them qua three sale deeds i.e. one executed on 03.01.1989 and two executed on 04.09.1989. The Court in appeal modified the judgment and decree passed by the trial Court to the limited extent of holding them entitle to interest as well.

There is no dispute between the parties with regard to various payments made by the appellants from time to time. Counsel for the respondents is not in a position to justify retention of said amount by the respondents without payment of interest. Since the appellants have been held entitled to recover the amount in question on the premise that the

respondents have no right to retain their money, the respondents cannot escape their liability to pay interest from the date the money was received by the respondents till it is paid back to the appellants. Similarly, as the appellants have been deprived of their money which has been utilized by the respondents without any justification, I find merit in the contentions of the appellants that they are entitled to recover the decretal amount with interest @7.5% from the date of payment till its realization. In this view of the matter, aforesaid question is answered in favour of the appellants and against the respondents.

In view of what has been discussed hereinabove, the appeal is allowed in the aforesaid terms. However, the parties are left to bear their own costs.

(Rekha Mittal)
Judge

25.01.2016
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