

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3288 of 2010 (O&M)

Date of Decision: April 04, 2016

Gurbachana Ram (since deceased) through L.Rs

...Appellants

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.A.S.Gill, Advocate,
for the appellants.

Mr.Roopak Bansal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the findings rendered by the Lower Appellate Court, whereby the suit for specific performance of the agreement to sell dated 7.9.1999 in respect of land measuring 8 marlas on adjustment of the earnest money, has been dismissed in toto.

Mr.A.S.Gill, learned counsel appearing on behalf of the appellant-defendant submits that in pursuance to the aforementioned agreement to sell, respondent-plaintiff is alleged to have given earnest money of ₹3,50,000/- against the total sale consideration of ₹4,00,000/- and the stipulated date for registration and execution of the sale deed was 7.12.1999. Though the suit has been filed on 17.1.2000, but the trial Court on the preponderance of the evidence, found that since the agreement to

sell was in respect of 13 marlas of land, out of which 5 marlas had already stood sold vide sale deed dated 19.4.1989, held the plaintiff entitled to refund of the earnest money along with interest @ 9% per annum from the date of execution of the agreement to sell. However, aggrieved of the same, both the parties filed statutory appeals. Appeal filed at the instance of the respondent-plaintiff has been allowed, whereas that of the appellant-defendant qua refund of earnest money has been dismissed. Both the Courts below have not appreciated the report of the Expert, much less even on bare perusal of the document, it does not convey the agreement to sell but was a loan transaction. It was categorically stated in the written statement that the son of the appellant had to go abroad and for that, appellant had appended his thumb impression on the blank papers and given the same to agent Amarjit Singh, but when son returned from Havana and money was sought to be refunded, coined the story of the agreement to sell and filed the suit by producing Gurmail Singh as vendee and, thus, urges this Court that the respondent-plaintiff is not entitled to discretionary relief as per the provisions of Section 20 of the Specific Relief Act, 1963 (for short “1963 Act”) as following substantial questions of law arise for determination by this Court:-

- a) Whether in the given facts and circumstances, the judgment and decree of the Lower Appellate Court granting discretion under Section 20 of 1963 Act and setting-aside the judgment and decree of the trial Court ordering for refund of the earnest money is sustainable in the eyes of law?
- b) Whether the judgment and decree of the Lower Appellate Court is suffering from illegality and perversity, much less

misreading of the report and other circumstances?

Mr.Roopak Bansal, learned counsel appearing on behalf of the respondent-plaintiff submits that the aforementioned agreement to sell has been proved through the testimony of Harbhajan Singh and Sat Pal Deed Writer, who unequivocally proved the execution of the sale deed by stating that it was not the money transaction but was an agreement to sell. The Lower Appellate Court granted the discretion and rightly so granted specific performance of 8 marlas of land after noticing the fact that 5 marlas of land had already been sold to Paramjit Singh. The Lower Appellate Court further ordered for adjustment of the amount from the earnest money. He further submits that no substantial question of law arises for determination and, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and also seen the agreement to sell. From the agreement to sell, particularly page 2, it does not leave any manner of doubt that the parties had agreed to enter the agreement for the sale of the property as described above. At the second page, there are three lines of the terms and conditions and third line is apparently on the thumb impression. On the third page, the thumb impression is below the middle of the page. It appears that the typing material has been drafted on a blank stamp paper. Had it been so, I am of the view that the trial Court rightly did not grant the discretion under Section 20 of 1963 Act and held entitled for refund of the earnest money, but on the back of the first page, there is thumb impression under the signature of the stamp vendor. For the purpose of agreement, no body will append his thumb impression on the top of the back side of the first stamp paper of denomination of ₹100/-. The Handwriting Expert has expressed his

view, but the same has been declined by both the Courts below by holding that it is not a conclusive proof of evidence. No doubt, the appellant-defendant has not placed on record the copy of the passport of his son vis-a-vis his visit to Havana, but the fact remains that the defendant had not shown his intention to enter the agreement to sell.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the Lower Appellate Court granting discretion is hereby set-aside and that of the trial Court is restored. The respondent-plaintiff is entitled to refund of earnest money along with the interest so ordered. The questions of law, noticed above, are answered in favour of the appellants and against the respondents.

The appeal stands allowed.

April 04, 2016
ramesh

(AMIT RAWAL)
JUDGE