

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

XOBS-19-C-2012 in/&
RSA No.1150 of 2011 (O&M)
Date of decision : 15.09.2016

R.P. Kapil

...Appellant

Versus

Shiv Kumar Sharma

..Respondent/Cross Objector

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. H.N.S. Gill, Advocate for the appellant.

Mr. Himanshu Puri, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the plaintiff has been held entitled to the recovery of amount of ₹1,20,000/- i.e. the amount of earnest money along with interest at the rate of 12% p.a. from the date of execution of agreement to sell dated 28.03.1998 till the decision of the suit and pendente lite interest @ 12% p.a. and future interest at the rate of 6% p.a..

Mr. H.N.S. Gill, learned counsel appearing on behalf of appellant-plaintiff submits that an agreement to sell dated 28.03.1998 in respect of suit property was entered into between the plaintiff and defendant for a total sale consideration of ₹2,40,000/- against the payment of

₹1,20,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 30.11.1998. The trial Court did not grant the discretionary relief on the premise that the property was in dispute. Before the lower Appellate Court, application under Order 41 Rule 27 CPC was moved but the same has been declined. In fact, had the application been allowed, property would have been identified. Even in affidavit marking the presence before the Magistrate on 30.11.1998, correct particulars of the property have been given. The defendant had taken the advantage of the disputed property. Discretion under Section 20 of the Specific Relief Act was required to be exercised.

Per Contra, Mr. Himanshu Puri, learned counsel appearing on behalf of respondent submits that vis-a-vis finding of the Courts below regarding the execution of the agreement to sell, Cross Objection bearing No.19-C of 2012 has been filed. In fact it was a fraudulent transaction. The defendant-Cross Objector had not appended the signatures on the agreement to sell. It was the outcome of the misrepresentation though the trial Court held the plaintiff entitled to ₹2,40,000/- i.e. double the amount of earnest money along with interest at the rate of 12% p.a. but the lower Appellate Court has reduced the amount to ₹1,20,000/-. In fact the agreement to sell has not been proved and thus urges this Court for dismissal of the present regular second appeal and urges that cross objections be allowed.

I have heard learned counsel for the parties and appraised the paper book and of the view that once identity of the property described as part of plot No.65 i.e. 12 ½ x 65 does not specify at which portion or which

revenue number is agreed to be sold, it was a vague agreement. Even by exercising the discretion under Section 20 of the Act, it would not have helped plaintiff in getting the possession of the property and rightly so, application qua additional evidence had been declined. Plaintiff even did not indicate in the affidavit in examination-in-chief about the description of the property i.e. commensurating with the contents of the affidavit dated 30.11.1998.

I am of the view that Courts below have rightly declined the discretionary relief. Qua stand of Mr. Himanshu Puri, that agreement to sell has to be proved, Cross-Objector has not been able to belie the signatures on the same and rightly so, Courts below have ordered for refund of the earnest money of ₹1,20,000/- along with interest.

I do not intend to differ with the findings arrived at by the lower Appellate Court.

Accordingly, appeal and the cross objection are dismissed, much less, no substantial questions of law arises for determination.

15.09.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No