

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

**R.S.A. No.131 of 2011 (O&M)**

Date of decision: 29.02.2016

Harish Kumar

...Appellant

Versus

S.K. Vishwas @ Shyam Kumar Vishwas @ Shyamat Kumar Vishvas  
(died through LRs)

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Vikas Singh, Advocate for the appellant.

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**Jitendra Chauhan, J.**

This regular second appeal is directed against the judgment and decree dated 27.05.2010, passed by the learned Additional District Judge, Palwal (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 28.11.2008, passed by the learned Civil Judge, Jr. Divn., Palwal, (for short, the 'trial Court'), has been dismissed.

Briefly stated, the plaintiff filed a suit for possession by way of specific performance of contract and permanent

injunction. It was pleaded that the plaintiff had entered into an agreement with the defendant on 01.03.2000. The price of the house was fixed at Rs. 4.50 lacs and a sum of Rs. 1.50 lacs was advanced as earnest money. The defendant executed a receipt in favour of the plaintiff. The sale deed was to be executed on 31.5.2001. It was further the claim of the plaintiff that he remained present before the office of Sub-Registrar, Palwal on 31.05.2001 for getting the sale deed executed and registered but the defendant did not turn up. Further, it is averred that on 12.09.2001, the defendant was paid Rs. 50,000/- in addition to the earnest money already made. The date of execution and registration was mutually extended upto 18.05.2004. A receipt in lieu of the payment was also executed by the defendant. On 18.05.2004, the plaintiff remained present in the office of Sub-Registrar along with the balance sale consideration but the defendant again did not come forward to execute the sale deed. The plaintiff served a telegraphic notice upon the defendant but the defendant did not pay any heed to the request of the plaintiff. Hence, the suit.

Upon notice the defendant appeared and filed written statement. It was pleaded by the defendant that the plaintiff was

running an associate of financial company and advances loan to the people. The defendant obtained loan of Rs. 1.50 lacs from the plaintiff and the plaintiff obtained the signatures of the defendant on some blank papers. Later on, the said papers were converted into agreement to sell and the receipts. The defendant never executed any agreement to sell or receipt in favour of the plaintiff.

The learned trial Court after appraisal of evidence dismissed the suit holding that the agreement Ex.P-1 and the receipt Ex. P-2 were never executed by the defendant. The plea taken by the defendant that it was a money transaction was accepted.

Feeling dissatisfied, the plaintiff filed appeal before the lower appellate court which was dismissed on 27.05.2010. Hence, the present appeal at the behest of the plaintiff.

It is contended on behalf of the appellant that both the courts below have erred in dismissing the suit of the plaintiff in toto because if the courts were of the opinion that the plaintiff was not entitled for the relief of specific performance in that eventuality, the plaintiff had every right to recover the amount advanced to the defendant. This aspect of the matter was not

considered by both the Courts below. It is further contended that the defendant has admitted his signatures on the agreement Ex.P-1 but despite that the suit of the plaintiff was dismissed.

I have heard the learned counsel for the appellant-plaintiff and perused the record.

The case of the plaintiff is that an agreement to sell was executed on 01.03.2000 by the defendant to sell the suit land for a total sale consideration of Rs. 4.50 lacs. An amount of Rs. 1.50 lacs was received by the defendant as earnest money on the date of execution of the agreement. The date fixed for execution and registration of sale deed was 31.5.2001 and on the given date, the defendant did not turn up. On 12.09.2001, the date of execution and registration of sale deed was extended upto 18.05.2004. Again, the defendant did not turn up which resulted into filing of the present suit. Both the courts below have returned concurrent findings of fact that the agreement to sell Ex.P-1 was never executed by the plaintiff. Rather, Ex.D-1 and Ex.D-2 went on to show that it was a money transaction which was subsequently converted into the agreement to sell. In view of the finding of fact recorded by both the courts below that no agreement to sell was ever executed, the argument of learned

counsel for the appellant that the money ought to have been returned, falls to the ground. The mere admission of signatures on document does not clothe the other party to derive any right from the same unless the document was executed by the executor with the same intention as conveyed by the document. The finding of fact that the document was a money transaction cannot be disturbed in the present regular second appeal. The argument of the learned counsel for the appellant that if the prayer for specific performance of the agreement to sell was declined, then the Court ought to have decreed the suit for the refund of the earnest money along with interest, does not cut much ice, as the plaintiff himself has not laid an alternative relief of refund of the earnest money. The claim was restricted to the specific performance of the contract and permanent injunction. There is no prayer for refund of the earnest money as alternative prayer. So, both the Courts below have rightly not allowed refund of earnest money, which was never prayed. There is no question of law much less substantial question of law involved in the present appeal. Consequently, the appeal is dismissed.

29.02.2016  
SN

**(JITENDRA CHAUHAN)**  
**JUDGE**