

254.

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

Regular Second Appeal No.4540 of 2011 (O&M)

Date of decision: 08.01.2015

Jagdev Singh

... Appellant

versus

Ajit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.K. Chugh, Advocate,
for the appellant.

Ms. Avnika Gupta, Advocate,
for Mr. Vinod S. Bhardwaj, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The second appeal is brought at the instance of the defendant who suffered a decree for specific performance brought at the instance of the plaintiff. The agreement was admitted. The consideration stated as earnest was admitted. The contention, however, the plaintiff was his wife's near relative and he had only borrowed money from the plaintiff. The agreement was written only as a security for the loan obtained. The defendant attempted to state that there was a construction on the property which was the subject

matter but it was not included in the ground. He also wanted to contend that the agreement that recited cash as having been received which itself was proof that it was not meant as earnest for an agreement of sale. According to the defendant, if it was received as earnest money, the receipt would have been prepared only as an earnest and would not have referred to the receipt as cash.

2. The courts below were not impressed and proceeded to reject the defence and grant a decree. I am not impressed either. There is no proposition of law made out in this case and there is no justification for making an interference with reference to the nature of transaction as sale is so factual in the manner of consideration of whether it was meant to be an agreement or a security for loan. The vital parameters of proof which could have been possible by showing that the property was worth several times more than what was agreed to be sold or that the relationship between parties at all times had been in such a way that there was merely a borrowing, were all not present at the trial through evidence. There is no error in the judgments of the courts below for interference. Second appeal is dismissed.

(K.KANNAN)
JUDGE

08.01.2016
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