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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 02.12.2016

1.

RSA-59-2011 (O&M)

Manjit Singh

... Appellant

Versus

Randhir Singh and others

... Respondents

2.

RSA-1570-2011 (O&M)

Randhir Singh

... Appellant

Versus

Manjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the appellant in RSA-59-2011 and
for respondent No.1 in RSA-1570-2011.

Mr. M.K. Dogra, Advocate
for respondent No.1 in RSA-59-2011 and
for the appellant in RSA-1570-2011.

Mr. Dhirender Chopra, Advocate
for respondent Nos.2 & 3.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**
No.59 of 2011 titled as **“Manjit Singh V/s Randhir Singh and others”** at
the instance of appellant-plaintiff (hereinafter called 'vendee') against
declining of the discretionary relief under Section 20 of the Specific Relief

Act 1963 and **RSA No.1570 of 2011** titled as **“Randhir Singh V/s Manjit Singh and others”** at the instance of the appellant-defendant (hereinafter called 'vendor'), whereby the lower Appellate Court has granted the refund of the earnest money.

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Mr. Amit Kohar, learned counsel appearing on behalf of the plaintiff-vendee submits that an agreement to sell dated 01.12.1994 was entered into between the parties in respect of land measuring 83 kanals 14 marlas for a total sale consideration of ₹ 10 Lacs against the payment of ₹ 3,50,000/-. The stipulated date for execution and registration of the sale deed was 01.12.1996, being holiday, the plaintiff-vendee approached the office of Sub-Registrar for performing his part of agreement on 02.12.1996, but the defendant-vendor did not appear. The plaintiff-vendee had been perpetually approaching the defendant-vendor for execution and registration of the sale deed. Having failed to do so, sent a legal notice dated 08.06.1998, but in the reply, it surfaced that the defendant had already sold the land vide three sale deeds dated 07.05.1998, 09.05.1998 & 19.05.1998. The stand in the written statement was a complete denial by stating that while executing the sale deed, aforementioned, the scribe must have obtained the signatures on blank stamp paper and therefore, the trial Court dismissed the suit, but the lower Appellate Court has granted the alternate relief by taking into consideration that the agreement to sell was actually executed and proved. The plaintiff-vendee had always been ready and willing to perform his part of the agreement and therefore, discretionary relief under Section 20 of the 1963 Act ought to have been granted.

Mr. M.K. Dogra, learned counsel appearing on behalf of the defendant No.1-vendor submits that once the agreement to sell has completely denied and both the parties have examined the Expert, the Expert always toe to the line of the parties, who engages them. Yet the Court could have exercised the role of an Expert under Section 45 of the Indian Evidence Act. Having failed to do so, the alternative relief should not have been granted. Even the discretionary relief cannot be granted as there is no challenge to the sale deed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and substance in the submissions of Mr. Sumeet Mahajan, for, the suit was instituted on 17.07.1998. No explanation has come forth from 02.12.1996 till legal notice dated 08.06.1998 and filing of the suit as indicated above. The readiness and willingness has to be from the date of execution of the agreement, during its subsistence, till the filing of the suit and till the passing of the decree, in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **"Sita Ram and others V/s Radhey Shyam" 2007 (4) RCR (Civil) 533**, therefore, rightly so, the Court declined the discretionary relief and the finding the agreement to sell actually been entered into and ordered for refund of earnest money along with interest 12% p.a. and future interest @ 6%, even the sale deeds *ibid*, have not been challenged as they were executed prior to filing of the suit.

There is no force and merit in the submissions of Mr. M.K. Dogra, for, not holding the plaintiff-vendee entitled to refund of earnest money as the plea given is not only acceptable, but too remote to even

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeals are dismissed.

(AMIT RAWAL)
JUDGE

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