

207

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-842-2012 (O&M)
Date of decision : 16.12.2016

Sukhpal

... Appellant

Versus

Jasbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Bansal, Advocate
for the appellants.

Mr. Bhupender Singh, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellant-vendor-defendant No.1 is aggrieved of the concurrent findings of fact, whereby the suit of the respondent(s)-plaintiff(s) seeking specific performance of the agreement to sell 16.03.2007 in respect of land measuring 14 kanals 1 marla has been decreed by both the Courts below.

The respondent(s)-plaintiff(s) is stated to have been paid a sum of ₹ 5,00,000/- as earnest money against the total sale consideration of ₹ 32,49,060/-. The trial Court did not grant discretionary relief on the ground that the vendor was not owner, but only an agreement-holder, in fact, it was an anticipation of acquiring the title. Aggrieved against the same, both vendor and vendee have filed the appeals and the same have

been dismissed.

Mr. Rajesh Bansal, learned counsel appearing on behalf of the appellant-defendant No.1 submits that before the lower Appellate Court, for withdrawal of the charges of stamp duty of ₹ 21,800/-, the respondent(s)-plaintiff(s) is alleged to have executed a power of attorney. No sane person would execute the attorney, until and unless the earnest money has not been received, therefore, the findings rendered by the trial Court returning the earnest money, are neither here nor there, rather resulting into putting onerous condition upon the appellant-defendant No.1 and double benefit to the vendee.

Mr. Bhupinder Singh, learned counsel appearing on behalf of respondent No.1-plaintiff submits that the execution petition filed seeking return of the earnest money has already been satisfied. The entire earnest money of ₹ 5,00,000/- along with interest as awarded by the trial Court, has been received.

He further submits that even an application submitted for refund of the stamp duty *ibid*, it is not on the basis of the attorney, but on the basis of the signatures of both vendor and the vendee.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Rajesh Bansal, for, the factum of satisfaction of the execution of the judgment and decree is not disputed. The submission of application before the attorney for refund of the earnest money, where the signatures are of the vendor and the vendee. In fact the power of attorney alleged to have been given by the vendor in favour of vendee pales into insignificance. The appellant-defendant No.1, in fact, had no right and

interest in the property, rather he made to believe him that he would succeed in getting the title, but the Court found that once the vendor had no valid title, he could not pass the same. It is, in this background of the matter, refund of the earnest money has been ordered.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

16.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No