

RSA No.45 of 2016 (O&M)

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

**RSA No.45 of 2016 (O&M)
Date of decision:27.09.2016**

Kuljit Kaur

... Appellant

Vs.

Jujhar Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarju Puri, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the judgments and decrees rendered by both the Courts below, whereby, the respondent-plaintiff has been held entitled to refund of earnest money of ₹9,25,000/- along with interest.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-defendant submits that the respondent-plaintiff instituted the suit seeking possession and specific performance of the agreement to sell dated 18.03.2005 which was for a total sale consideration of ₹9,25,000/-. The stipulated date for execution and registration of the sale deed was 18.03.2007. The defendant received entire sale consideration by way of a cheque of ₹5.00 lacs and ₹4,25,000/- in cash.

The suit aforementioned, was instituted on 23.01.2009. A categorical stand taken by the defendant in the written statement, was that there were material alterations in the agreement to sell. In fact, it was a loan

transaction and received only ₹5 lacs. Even the witness to the receipt denied the signatures. He further submits that the plaintiff examined PW-2 Mohan Singh and appeared himself as PW-1 and vide affidavit Ex.PWA/1 reiterated the averments made in the plaint to prove the alleged agreement Ex.P1 and receipt Ex.P2. Both the transactions were of 2006 which were challenged and thus, urges this Court for setting aside the impugned judgments and decrees. The aforementioned facts have not been noticed by both the Courts below and thus, there is illegality and perversity in the findings under challenge.

I have heard learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below and the submissions of Mr. Sarju Puri, are not able to cut ice, for, it is the defendant's case that he had taken a loan of ₹4,25,000/- through pronote and ₹5 lacs having obtained by a cheque.

From the cumulative reading of the aforementioned submissions of Mr. Sarju Puri and facts, it is evident that defendant has taken a loan of ₹5 lacs through cheque and ₹4,25,000/- cash was paid against execution of pronote and receipt. The pronote and receipt are of the year 2006. The Courts below, in my view, have rightly declined the discretionary relief in view of the provisions of Section 20 of the Specific Relief Act as the plaintiff filed a suit after a period of two years from the target date but having within a period of limitation. The denial of signature of the witness to the receipt would not be material in view of the defendant's case notice above.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 27, 2016
savita

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No