

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

RSA No.6446 of 2014 (O&M)

Date of decision : 16.09.2016

Dalip Singh

...Appellant

Versus

Sukhwinder Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.S. Mamli, Advocate for the appellant(s).

Mr. Adarsh Jain, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby plaintiff has been held entitled to the alternative relief of recovery of double the amount of earnest money of Rs.1,20,000/- along with interest at the rate of 10% p.a. from the date of filing of suit i.e. 17.07.2010 till repayment.

Mr. R.S. Mamli, learned counsel appearing on behalf of appellant-defendant submits that on the receipt of the summons, categorical stand in the written statement was taken, that he had taken the loan from Lachhman Singh which was settled and in that respect, blank stamp papers were signed. Same has now been converted into agreement to sell with Sukhwinder Singh. Stamp paper is alleged to have been purchased by

Lachman Singh who is none else but relative of Sukhwinder Singh. The categoric pleading in the plaint is that the appellant was not the owner of the property and, therefore, the suit for recovery was filed. In fact the simplicitor suit for recovery without claiming the suit for specific performance was not maintainable. There is categoric pleading in the plaint that the appellant-Dalip Singh was agreement holder with Lachhman Singh and it had not seen the light of the day. It is strange that once a person who have no title would enter into the agreement to sell will receive the alleged amount of earnest money. In fact plaintiff in connivance with Lachhman Singh filed the suit as Lachman Singh according to the evidence is Mama of Sukhwinder Singh. Courts below granted double the amount of earnest money in favour of plaintiff and also awarded the interest. It is not a bounty, much less, commercial transaction. In fact, agreement to sell had not been proved and urges this Court for setting aside of the concurrent findings of fact.

Mr. Adarsh Jain, learned counsel appearing on behalf of respondent submits that agreement to sell has been proved through the testimony of Lachhman Singh and Dalip Singh. All the witnesses have spoken in same line regarding the payment of earnest money and Courts below rightly ordered for recovery of the amount. Dalip Singh is none else but the Government Servant. Concurrent findings of fact cannot be interfered with until and unless there is gross and grave illegality and perversity and urges this Court for affirming of the findings under challenge.

No doubt, this Court on earlier occasions had been framing

substantial questions of law while deciding the appeal, but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others, AIR 2016 SC 1213*, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in *Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others, 2001 (4) SCC 262*, applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

I have heard learned counsel for the parties and appraised the paper book and of the view that it is a clear cut fraud having been played upon by the appellant-defendant as stamp papers have been purchased by Lachhman Dass in favour of Dalip Singh. The factum of loan transaction is admitted. The suit is only for the recovery of the amount and not for specific performance. Admittedly, defendant was not having title. In fact, there is no direct correlation with the earlier transaction. Once the loan transaction has been admitted by Lachhman Dass, there is every possibility of converting the stamp paper into agreement to sell. Courts below have rightly ordered for refund of double the amount of earnest money.

In my view, parties have never intended to enter into agreement to sell as it is suffering from suspicious circumstances as indicated above.

For the foregoing reasons, judgment and decree of the Courts below are set aside. Suit for recovery is dismissed.

Resultantly, appeal stands allowed.

16.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No