

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1970 of 2013 (O&M)
Date of Decision: 30.10.2017**

Saheed

... Appellant

Versus

Sohrab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhimanyu Singh, Advocate,
for the appellant.

Mr. Rakesh Kumar Sharma, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.(Oral)

1. This is plaintiff's second appeal.
2. Both the Courts have concluded on the entire facts and circumstances of the case, the pleadings and the evidence in support produced by the parties that the prayer for the discretionary relief of specific performance having regard to Section 20 of the Specific Relief Act, 1963 should be denied to the plaintiff and instead an order should be made for refund of ₹65,000/- given as loan by the plaintiff to the father of the defendants long ago. The dispute arose out of an agreement to sell dated May 14, 1994 in which the target date was fixed for May 31, 1995 which was extended to 1996 and thereafter to May 31, 1997 vide writing Ex.P-6.

After lapse of a period of two years i.e. from May 31, 1997 onwards the date

of execution and registration of the sale deed was extended for an indefinite period not curtailed by time. The Courts thought this is to be a suspicious circumstance when it was proved on file that plaintiff had extended loan to the defendant in a sum of ₹65,000/- and the sale consideration in the agreement of sale was much the same. Therefore, it was more probable, in the preponderance of probabilities and likelihood that the subsequent agreement Ex.P-5 was really security for repayment of loan amount advanced by the plaintiff to the father of the defendants. The land in dispute admeasures 6 Kanals 13 Marlas agricultural.

3. In these circumstances, the trial Court held that a case for recovery of a sum of ₹65,000/- was made out with interest @6% per annum from the date of execution of the agreement Ex.P-1 till its realization. The Court refused to exercise discretionary power to enforce the contract of sale. The trial Court made a plausible observation that had the intention of the plaintiff been to execute the sale deed and the sale consideration allegedly having passed then there was no reason why the plaintiff did not enforce the agreement and compel the defendants to execute the sale deed and convey the property title when only stamp duty and registration charges remained to be paid.

4. The Appellate Court has agreed with the view of the trial Court in its judgment and decree dated January 22, 2013 passed by the learned Additional District Judge, Nuh at Mewat. The main relief has been declined and the subsidiary relief of refund of money has been allowed for good and sufficient reasons.

5. It is pointed out by the learned counsel for the respondents that

the judgment debtor has already deposited a sum of ₹1,31,400/- vide E-Challan in the Court of the Civil Judge (Senior Division) as one-time tender of principal sum plus interest, the photocopy of which receipt has been produced in Court bearing stamped date: March 11, 2015 and the same is retained on record. No ground for interference is made out in a transaction which was a security of loan with no intention to transfer property in the name of the lender, the eager plaintiff. Findings of fact are concurrent and suffer from no infirmity of misreading of evidence or overlooking evidence which deserved to be read.

6. As a result, the appeal has no substance and is dismissed.
 7. The appellant is free to apply for release of the decretal amount.
- The appeal being devoid of merit is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

30.10.2017
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Whether speaking/reasoned	Yes
Whether reportable	No