

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4816 of 2015(O&M)

Date of Decision: 25.08.2017

Balbir Singh

...Appellant

Vs.

Satpal Kaur & others

...Respondents

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

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

RAJIV NARAIN RAINA, J. (Oral)

The challenge to the denial of specific performance in the decree in appeal is given up during the hearing and the prayer is confined to refund of money. The agreement to sell has been disbelieved by both the Courts for good and sufficient reason. A subsequent sale deed has come into existence between vendor and 3rd party, namely one of the two properties thrown in the basket of the alleged sale agreement. One was relating to 20 kanals of agricultural land a while the other property was a shop. There is no evidence of electronic transfer of ₹ 15 lakhs which was alleged as sale consideration under the sale agreement in suit. There are two receipts which the plaintiff/appellant produced on record. But they have not been proved to the hilt by evidence since the story set up by the vendor's attorney Bhupinder Singh in his deposition was that the agreement was executed and it was he who had received the purchase money from the vendee and passed the amount to the vendor. Best evidence of money having changed hands has not been produced and, therefore, on a mere surmise or conjecture, the

prayer of Mr. Sarju Puri, Advocate, for refund of money cannot be accepted especially when the allegations that the entire sale consideration was passed at the time of execution of the agreement to sell would without executing a sale deed would not normally be an act of a prudent person without conveying the property and handing over possession. The alleged sale amount of ₹ 15 lakhs may have been bifurcated into 2 parts i.e. ₹ 11 lakhs and ₹ 4 lakhs but without anything further does not help or promote the case for refund of money. For recovery of money, there must be unimpeachable evidence without any suspicion or doubt. If the transaction is clouded then the Courts below were correct in dismissing the suit and the appeal filed by the appellant/plaintiff. I have no reason to differ with the findings of the fact recorded by the both Courts below upon a due appreciation of the evidence available on record. As a result, the appeal is found devoid of merit after hearing and the same deserves to be dismissed without admission.

No substantial question of law arises for consideration on the second appeal side of this Court either under Section 100 of the CPC or Section 41 of the Punjab Courts Act, 1918. Accordingly, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.08.2017
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Whether speaking/reasoned *Yes.*

Whether reportable *No*