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

**RSA No.6137 of 2015 (O&M)
Date of Decision: 07.12.2017**

Prem Kumar

.....Appellant

Vs

Sunder Lal and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in Regular Second Appeal against the judgments and decrees passed by the Courts below in a suit for specific performance.

[2]. Brief facts are that an agreement to sell was executed between defendants No.1 and 2 on 30.10.1998 in respect of suit land. Thereafter defendant No.2 executed agreement to sell dated 22.01.2004 with the plaintiff. An earnest money to the tune of Rs.1,25,000/- was paid to defendant No.2. There was no record available with the office of HUDA, Rewari in respect of execution of alleged agreements, rather as per record the disputed plot was lying in the name of defendant No.1. The suit

of the plaintiff was rejected qua defendant No.1 vide order dated 29.08.2008.

[3]. Trial Court decreed the suit to the extent of alternative relief of refund of earnest money along with interest @ 6% per annum from the date of execution of the agreement to sell till final realization of the amount from defendant No.2 Rajesh Kumar. The judgment and decree of the trial Court was upheld by the lower Appellate Court.

[4]. Since defendant No.2 was not shown to be the owner of the plot in question, therefore, the plaintiff had no such enforceable right in ownership of the suit property which was not owned and possessed by defendant No.2, who had executed agreement to sell dated 22.01.2004 and received earnest money of Rs.1,25,000/-. Since defendant no.2 was not having any saleable right with him, therefore, the trial Court granted alternate relief of refund of earnest money along with interest @ 6% per annum. Grant of alternate prayer in my considered opinion in the facts and circumstances of the present case cannot be held to be illegal, nor the same is found to be suffered with any perversity.

[5]. In view of above, no law point worth cognizance is involved in the present appeal. The same is accordingly

dismissed.

[6]. Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the civil misc. applications. They are disposed of accordingly.

December 07, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No