

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

RSA No.5348 of 2014 (O&M)

Date of Order: 12.09.2017

Jagjit Singh

..Appellant

Versus

Avtar Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate,
for the appellant.

Mr. Jangsher Singh, Advocate,
for respondent no.1.

Mr. Rahul Sharma, Advocate,
for respondent nos.2 and 3.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in regular Second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had entered into an agreement to sell with late Sh. Joginder Singh with respect to land measuring 11 kanals 18 marla. It was provided in the agreement that a litigation is pending in the Court and if the decision goes in favour of Joginder Singh, the property would be sold at Rs.1,31,000/- per acre. It was further provided that if the litigation goes against Joginder Singh, Joginder Singh would be liable to refund double the earnest money i.e. Rs.1,00,000/- (earnest money being Rs.50,000/-). In the previous litigation pending before the High Court, a compromise was entered into and pursuant thereto the sale deed was executed by Avtar Kaur widow of late Sh. Joginder Singh, defendant no.1, on 28.12.2006.

Plaintiff filed a suit for specific performance of agreement to sell dated 01.06.1995 on 09.06.2007 by asserting that he has come to know of the decision of the High Court recently.

Learned trial Court after appreciating the evidence available on the file, ordered refund of the earnest money. Appeal filed by the plaintiff was also dismissed.

Learned counsel for the appellant has argued that the original agreement to sell was executed on 15.06.1982 by Joginder Singh in favour of Amrik Singh with respect to land measuring 24 kanals @ Rs.18,000/- per acre. However, in the compromise, the sale deed has been executed in favour of defendants no.2 and 3. The compromise is not a decision of the Court and the settlement was arrived at only to defeat the rights of the plaintiff.

On the other hand, learned counsel for the respondents has pointed out that defendant no.2 is widow of Amrik Singh, whereas defendant no.3 is wife of brother of Amrik Singh, therefore, the argument of learned counsel for the appellant is factually incorrect.

I have carefully heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below.

In the present case, plaintiff had in fact agreed to purchase the land involved in a litigation. It was specifically mentioned in the agreement to sell that if the decision of the Court goes in favour of Joginder Singh, Joginder Singh would honour the agreement to sell and execute the sale deed. It was further provided that however, if the decision of the case goes against Joginder Singh, then he shall be liable to refund double of the

earnest money i.e. Rs.1,00,000/-. Once the result of the previous litigation went against Joginder Singh, the plaintiff had no right to seek specific performance of the agreement to sell.

I do not find any force in the argument of learned counsel for the appellant that sale in favour of defendants no.2 and 3 is not in pursuant to the agreement to sell dated 15.06.1982. Defendant no.2, as noticed above is widow of late Shri Amrik Singh, whereas defendant no.3 is wife of brother of Amrik Singh. Merely because in the compromise/settlement, parties have increased the sale consideration to be paid to widow of late Shri Joginder Singh, it is not possible to conclude that the sale was not pursuant to agreement to sell dated 15.06.1982.

Next submission of learned counsel for the appellant is that as per the agreement, plaintiff is entitled to refund double of the earnest money, as per the contract between the parties.

There is no serious opposition to the argument of learned counsel for the appellant. In these circumstances, judgments and decrees passed by the Courts below are modified and the plaintiff is held entitled to refund of Rs.1,00,000/- along with interest @ 9% per annum.

The regular second appeal is dismissed accordingly.

September 12, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No