

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

RSA No.4130 of 2017 (O&M)

Date of Order: 08.11.2107

Gurtej Singh

..Appellant

Versus

Malkiat Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhinav Gupta, Advocate,
for the appellant.

Mr. Aman Pal, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in regular second appeal against the judgment passed by the learned first appellate Court.

In the considered opinion of this Court, following substantial question of law arises for consideration:-

- (i) Whether the proposed vendor is entitled to forfeit the additional amount apart from the earnest money on failure of the other party to perform his part of the contract?

It is not in dispute that the defendant-appellant had agreed to sell 5 bighas of land to the plaintiff for a total sale consideration of Rs.35 lacs vide agreement to sell dated 12.01.2011 and received a sum of Rs.3 lacs as earnest money. As per the agreement to sell, the sale deed was to be executed and registered on 31.12.2011. Plaintiff filed a suit for recovery of Rs.8 lacs (Rs.5 lacs was paid subsequently on 19.07.2011).

Plaintiff did not file a suit for specific performance of the

agreement to sell.

Learned trial Court dismissed the suit filed by the plaintiff whereas learned first appellate Court has decreed the suit filed by the plaintiff and ordered refund of Rs.8 lacs along with interest @ 6% per annum from the date of receipt of amount till its realization.

It is not in dispute that the plaintiff and the defendants are having lands adjoining to each other. It is the case of the plaintiff that the defendant had misrepresented, claiming himself to be exclusive owner in possession and the land agreed to be sold was not having any passage.

On the other hand, it is the case of the defendant that the plaintiff being neighbour knew everything about the land and had knowledge of the fact that the land is part of a big khewat and the defendant is only a co-sharer. It is further pleaded by the defendant that plaintiff had knowledge that the land does not have an independent passage and that the defendant has agreed to sell the land to the plaintiff, who was owner of the adjoining land.

Learned first appellate Court ordered refund of the entire amount paid on equitable consideration. Learned first appellate Court has failed to consider whether there was any misrepresentation or not on the part of the defendant entitling the plaintiff to claim refund of the entire amount.

In this case, facts are apparent on the record. Plaintiff and defendant are owners of the adjoining land. If a neighbour is purchasing the property of other neighbour he knows about the topography of the land and is suppose to know the details of ownership of the other party whether he is sole owner or a co-sharer/ co-owner.

Still further the plaintiff himself got served the notice calling

upon the defendant to come and perform his part of the contract vide notice dated 16.01.2012. Once plaintiff after the target date, called upon the defendant to come and execute the sale deed, therefore the plea taken by the plaintiff that the defendant had misrepresented is an after thought.

If on 16.01.2012, the plaintiff was ready and willing to get the sale deed executed in his favour i.e. after one year from the date of the agreement to sell then the plaintiff's story that there was misrepresentation of facts cannot be believed.

Taking into consideration the aforesaid facts, the plaintiff cannot claim to be that innocent as he is projecting.

Now the stage is set for considering the question of law.

QUESTION

Whether the proposed vendor is entitled to forfeit the additional amount apart from earnest money, on failure of the other party to perform his part of the contract?

It is not in dispute that the total earnest money paid under the agreement to sell was Rs.3 lacs. Thereafter, the plaintiff had paid additional sum of Rs.5 lacs. Defendant is only entitled to forfeit Rs.3 lacs which is the amount of earnest money. The agreement to sell also provides that on failure of the plaintiff to perform his part of the contract, the amount of earnest money shall be forfeited. Therefore, defendant cannot permitted to withhold the entire payment.

In this regard, reference can be made to a judgment passed by the Hon'ble Supreme Court reported as **Satish Batra v. Sudhir Rawal, (2013) 1 SCC 345.** Hon'ble the Supreme Court has relied upon a Constitutional Bench judgment of the Hon'ble Supreme Court reported as

Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405.

Taking into consideration the aforesaid settled position of law, the question of law framed earlier is answered in favour of the parties accordingly.

In view of what has been recorded hereinabove, the regular second appeal is partly allowed. Plaintiff shall be entitled to refund of Rs.5 lacs along with interest @ 6% per annum from the date of payment till the date of refund.

November 08, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No-