

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

RSA No.4565 of 2017(O&M)

Date of Decision: 25.09.2017

Sharanjit Kaur and othersAppellants

Versus

Kulwant Singh ... Respondent

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

Present:Mr. R.K. Arya, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

CM No.11931-C of 2017

For the reasons mentioned in the application, delay of
55 days in re-filing the appeal is hereby condoned.

Application stands disposed of.

CM No.11932-C of 2017

Learned counsel for the applicant/appellants submitted
that the requisite Court fee has been affixed, therefore, the
application for making good the deficiency in Court fee be
allowed.

For the reasons mentioned in the application, applicant
is allowed to make good the deficiency in Court fee.

Application stands disposed of accordingly.

Main case

[1]. This is an appeal filed by the defendants against the judgments and decrees passed by the Courts below in a suit for specific performance and permanent injunction.

[2]. An agreement to sell was executed on 02.01.2009 by Sukhwant Singh (predecessor-in-interest of defendants) in favour of the plaintiff in respect of 12 kanals 3 marlas of land @ Rs.5,00,000/- per acre. Total sale consideration was agreed to be Rs.7,59,375/-. An earnest money to the tune of Rs.1,60,000/- was paid and possession was delivered at the time of execution of agreement to sell. The target date for execution and registration of sale deed was fixed on or before 03.07.2009.

[3]. The suit was filed with the averments that on 02.01.2008, Sukhwant Singh approached the wife of plaintiff for selling his land measuring 12 kanals 3 marls. Settlement was made between the wife of the plaintiff and said Sukhwant Singh. Rate of land was settled to be Rs.5,00,000/- per acre. An amount of Rs.1,36,000/- was received by Sukhwant Singh as earnest money from the wife of the plaintiff for his household necessity. On the same day, wife of the plaintiff, Sukhwant Singh with Bakshish Singh and Manjit Singh came to Batala Tehsil Complex. Sukhwant Singh purchased the stamp papers and got the agreement typed from a typist. Sukhwant Singh

along with marginal witnesses namely Manjit Singh and Bakshish Singh signed the agreement to sell dated 02.01.2008. As per the said agreement, Sukhwant Singh was to execute the sale deed on or before 02.01.2009 after receiving the balance sale consideration before the Sub Registrar. Thereafter, with the consent of both the parties in order to extend the date of execution of sale deed, another agreement to sell dated 02.01.2009 was executed, in which Sukhwant Singh received further amount of Rs.24,500/- from the plaintiff in the presence of Balwant Singh, Paramjit Singh, Sharanjit Singh and Gulzar Singh and agreed to execute the sale deed on 03.07.2009. The possession was handed over to the plaintiff vide this agreement Ex.P2. The factum of payment of earnest money was admitted by Sukhwant Singh in the presence of witnesses.

[4]. The suit was contested by the defendants on the ground that Sukhwant Singh was in the habit of drinking. No such agreement to sell was executed, nor any earnest money was received by him and the amount received as loan has already been returned to the plaintiff in the presence of witnesses. At the time of returning of the amount, a dispute arose with regard to rate of interest.

[5]. The execution of agreement to sell was proved with reference to attesting witnesses, but the Courts below have

recorded a finding that there was no intention on the part of defendant Sukhwant Singh to sell the property to the plaintiff. There was only a money transaction between them. Plaintiff had obtained the signature of the defendant as a security for repayment. The factum of return of the amount was not proved by the defendant by leading any cogent evidence. Plaintiff was found to be entitled for the return of earnest money with interest. The execution of agreement to sell Ex.P2 was proved, but the Courts below have observed that the spirit of execution was not to sell the property, therefore decree for alternate relief was granted in favour of the plaintiff.

[6]. The substantial questions as formulated by learned counsel for the appellants do not arise in this appeal as the findings recorded by the Courts below are not beyond the pleadings, nor the same are found to be on account of conjectural approach.

[7]. Since a finding of fact has been recorded by the Courts below in respect of execution of agreement to sell without a real spirit on behalf of the defendant to execute the sale deed in respect of the property so agreed, therefore, no law point worth consideration is involved in the present appeal. The alternate relief of return of the earnest money along with interest, in my considered opinion cannot be taken to be a decision by

misreading of any pleading or material evidence on record.

[8]. In view of above, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

25.09.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No