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

**XOBJC-27-C-1988 and**
**RSA No.1180 of 1988 (O&M)**
**Date of Order: 30.07.2018**

**Sukhdev Singh etc.**

**..Appellants**

**Versus**

**Bikkar Singh etc.**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. C.B.Goel, Advocate,
for the appellants.

Mr. Anupam Singla, Advocate,
for respondents no.1 to 4.

Mr. Sanjeev Soni, Advocate,
for respondent no.5.

**ANIL KSHETARPAL, J.**

By this judgment, Regular Second Appeal No.1180 of 1988 and Cross Objection No.27-C-1988 shall stand disposed of.

Appeal has been filed by defendant nos.2 to 6 on two aspects:-

(i) The decree passed by the learned first appellate court ordering refund of double of the earnest money is illegal as there is no evidence available on the file to prove that the plaintiff suffered damages apart from earnest money on account of this agreement to sell;

(ii) The sale deed executed in favour of defendants-appellants i.e. defendant nos. 2 to 6 by defendant no.1 has wrongly been set aside.

On the other hand, plaintiff has filed cross-objections to assert that the learned first appellate court has erred in granting alternative relief to the plaintiff and refusing to grant specific performance of the agreement to sell.

Plaintiff claims that there is an agreement to sell in his favour dated 10.02.1981. This agreement to sell is available on page 33 of the trial court's record. As per the agreement to sell, half share of land measuring 80 kanals and 1 marlas was agreed to be sole @ Rs.20,000/- per acre and earnest money of Rs.20,000/- was received. As per the agreement to sell the sale deed was to be executed on 10.03.1981.

Learned first appellate Court while carefully examining the agreement to sell has recorded a finding that the agreement to sell has been interpolated. The findings arrived at by the learned first appellate court are extracted as under:-

> "*12. On merits of the appeal, it was contended by the counsel for the appellants that the alleged agreement dated 10.02.1981 (Ex.P4) is a tampered document there being additions and alterations in the area as well in the khasra numbers. Maintaining it was submitted that the agreement was for the sale of the land measuring 40 kanals, but later on alterations have been made to prove that the agreement was for sale of one half share of land measuring 80 kanals 1 marlas thereby touching the very basis of the agreement and that the court below has committed an illegality while arriving at findings under issue no.1,2 and 3. The argument when analysed from*

*the totality of the material on the file, deserves to be repelled. No doubt there are some additions and alterations regarding the khasra numbers, but the area is visible and as rightly submitted on behalf of the plaintiff-respondents no.1 to 4. The said alternations and additions can be said to have been made in good faith to carry out the real intention of the parties to the agreement and does not amount to material alterations at all. The land to be sold is 40 kanals and initially the khasra numbers for said area were entered, but as one-half share of the entire land measuring 80 kanals 1 marla was already sold by Jeet singh to Ram Singh and Lachman etc. vide sale deed dated 2.1.1981 (Ex.P-8), the specific khasra numbers covering area of 40 kanals could not be sold, so the necessary alterations seem to have been effected. Regarding the change of area of khasra nos. 2190 and 2192, a note on the left margin of second and concluding page stands added, which is in the hand of the same scribe and signed also by Jeet Singh. This lends support to the plea that the same was done to carry out the intention of the parties at the time of the execution.*

*13. The second limb of the argument is that the endorsement Ex.P4/A on Ex.P-4 is not signed by Jeet Singh and is rather fabricated by the plaintiffs vide which the date of registration of the sale deed has been*

> *extended to 15.05.1981 also amounts to material alterations. No doubt the signatures of Jeet Singh under endorsement Ex.P4/A are in variance to the other signatures available on Ex.P-4 to the naked eye, but the same does not amount to material as the same endorsement is not beneficial to the plaintiff in any way. Normally such additions can be availed only for extending the limitation for filing the suit. In the present case, the suit is within limitation from original date fixed i.e. 10.03.1981.. Secondly, Jeet Singh seems to have varied the said signatures under Ex.P4/A intentionally as he wanted to violate the agreement entered with the plaintiff and actually subsequently as rightly contended by Shri Nahar Singh counsel for the respondents."*

This Court has also with the help of learned counsel for the parties examined the agreement to sell. The findings arrived at by the learned first appellate court on the interpolation/additions in the agreement to sell are correct. These are visible from the naked eyes.

Learned counsel for the cross-objector/plaintiff, although, made sincere attempt to persuade this court to take a different view, however, keeping in view the fact that the interpolations are apparent from the naked eye, this court does not find any good ground to interfere with the aforesaid findings of fact arrived at by the first appellate court.

It is not in dispute that defendant nos.2 to 6-appellants had purchased the suit property vide registered sale deed dated 10.04.1981. The alleged endorsement for extension of the date for execution and registration of the sale deed is dated 15.05.1981. Defendant no.1-owner could not have extended the date once he had executed a registered sale deed in favour of defendant nos.2 to 6 on 10.04.1981. After 10.04.1981, defendant no.1 was left with no right, title or interest in the property. Apart from that, the learned first appellate court has correctly held that the endorsement of extension is also result of interpolation.

Now let's deal with the argument of learned counsel for the appellants i.e. defendant nos.2 to 6.

With regard to first argument, learned counsel for the plaintiff could not establish that any evidence has been led to prove that the plaintiff has suffered damages over and above the earnest money.

It is well settled that refund of double of the earnest money can only be ordered, if party/plaintiff establishes that there was some damages apart from the earnest money which was suffered by the plaintiff.

On the second issue, it may be noted that the plaintiff had challenged the sale deed only on the ground that such sale deed was not a bonafide transaction executed by defendant no.1 in favour of defendant nos.2 to 6 (appellants). Once the plaintiff has been held not entitled to specific performance of the agreement to sell, both the courts below committed an error in ordering setting aside of sale deed dated 10.04.1981. It is admitted position on the record that defendant no.1, the executor of the sale deed has never filed a suit for cancellation of the sale deed. It is only in a suit filed by the plaintiff, the sale deed has been set aside.

In these circumstances, the following substantial question of law arises for consideration:-

"*Whether while declining relief of specific performance*

> *of the agreement to sell and granting relief of refund of earnest money, a sale deed executed by the defendant/owner in favour of subsequent vendee can be declared illegal, null and void?"*

In the considered opinion of this Court, there cannot be inter se issue between the defendants. The plaintiff once has been held not entitled to any specific performance of the agreement to sell, the plaintiff had no locus standi to challenge the sale deed. Exactly same question has been answered by this court in RSA No.3725 of 2009 decided on 24.07.2018.

In view of the aforesaid discussion, the appeal filed by defendant nos.2 to 6 is allowed to the extent that double of the earnest money ordered to be refunded as also the finding of the court setting aside the sale deed dated 10.04.1981 shall stand set aside. The cross-objections filed by the plaintiff are ordered to be dismissed. Plaintiff shall only be entitled to refund of the earnest money paid i.e. Rs.20,000/- along with interest @ 9% per annum from the date of payment till the date of realisation.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**July 30, 2017** **(ANIL KSHETARPAL)**
**nt** **JUDGE**

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