

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

101+337

RSA No.2150 of 1988
Date of Decision:11.01.2018

Punjab Singh

...Appellant

Versus

Kashmir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.C. Chhabra, Advocate and
Mr. L.S. Sidhu, Advocate
for the appellant.

Mr. C.M. Munjal, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the judgments passed by both the Courts below.

Plaintiff had filed a suit for specific performance of an agreement to sell dated 10.12.1982 executed by defendant No.1 with respect to land measuring 16 kanals.

Both the Courts have recorded a concurrent finding of fact that the agreement to sell stands proved. However, specific performance of the agreement to sell has been declined on the ground that such sale would be in violation of statutory Rules i.e. Rule 3 of the Punjab Package Deal Properties (Disposal) Rules, 1976. Rule 3 provides for a restriction on the alienation of the property in dispute for a period of 20 years.

It is not in dispute that the agreement to sell and the suit filed was within the period of that restriction.

Learned counsel for the appellant has very vehemently argued

that since with the lapse of time during the pendency of litigation, the period is over, therefore, specific performance can be granted.

This Court has considered the submission. However, the Court does not find any substance therein. The agreement to sell was executed in 1982. The suit was filed by the plaintiff on 06.01.1984. The rights of the parties have to be seen on the day that the suit was instituted. Merely because the appeal has remained pending before this Court, the lapse of time cannot enure for the benefit of the plaintiff.

Learned First Appellate Court has ordered that defendant No.1 shall be liable to refund the earnest money i.e. Rs.3,500/- to the plaintiff.

Learned counsel for the plaintiff-appellant has submitted that he continues in possession of the property.

Taking into consideration these facts, the appeal filed by the appellant is dismissed with a direction that defendant No.1 shall refund the amount of Rs.3,500/- and on receipt thereof appellant-plaintiff shall return back the possession.

On the other hand, learned counsel for the respondents dispute this position and submits that he is in possession. This being so, then the plaintiff shall only be entitled to refund the earnest money.

Hence, this regular second appeal is dismissed.

11.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No