

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

Date of decision: 26.03.2018

1. RSA No.664 of 1990 (O&M)

Otej Paul Singh

..... Appellant

Versus

Jarnail Singh

..... Respondent

2. RSA No.963 of 1990 (O&M)

Jarnail Singh

..... Appellant

Versus

Otej Paul Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- None.

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two appeals bearing RSA No.664 of 1990 titled 'Otej Paul Singh Vs. Jarnail Singh' and RSA No.963 of 1990 titled 'Jarnail Singh Vs. Otej Paul Singh' which are connected.

In this case, learned counsel for the parties did not appear. This Court had sent notice to the appellant in RSA No.664 of 1990. It has been reported that the appellant has left the house since 1997. In these circumstances, this Court has left with no choice but to read and decide the case.

These two appeals have been filed against the judgments passed by the Courts below.

The appellant in RSA No.664 of 1990 is the plaintiff in the suit for possession by way of specific performance of agreement to sell whereas the appellant in RSA No.963 of 1990 is the defendant in the suit.

Plaintiff claimed the possession by way of specific performance of agreement to sell dated 14.02.1979 with respect to land measuring 52 kanals and 5 marlas. The defendant contested the suit and denied the execution of the agreement to sell as also receipt of the earnest money.

Learned trial Court held that the plaintiff is not proved to be ready and willing to perform his part of the contract as he is not proved to be having sufficient amount to get the sale deed executed. Learned trial Court further noticed that the suit was instituted after an inordinary delay of 3 years i.e. on the last day when the limitation for filing the suit for specific performance was going to expire. As per the agreement to sell, the sale deed was to be executed and registered on 16.06.1980 whereas the suit was filed on 15.06.1983. The Court also noticed that there is a decree passed against the defendant restraining him from alienating the suit property. Thus, the Court ordered refund of the earnest money i.e. Rs.70,000/-. Only plaintiff filed the first appeal. Learned First Appellate Court after re-appreciating the evidence available on the file affirmed the finding of the trial Court with respect to inordinate delay in filing the suit and the plaintiff was not ready and willing to perform his part of the contract. The learned First Appellate Court has also noticed that the plaintiff remain silent for almost 3 years. He only sent a notice to the defendant on 13.06.1983 i.e.

just two days before the filing of the suit. However, the learned First Appellate Court taking into consideration that the defendant was paid Rs.70,000/- as earnest money and which has remained with the defendant, the Court ordered that along with the amount of Rs.70,000/-, the plaintiff was also be held entitled to Rs.30,000/- as compensation along with 6% interest.

In the grounds of appeal, neither any misreading of evidence has been pointed out nor non-reading of any substantive evidence has been pleaded.

In view of the aforesaid, there is no force in RSA No.664 of 1990.

As far as appeal filed by the defendant-appellant, it is to be noticed that both the Courts have concurrently found that Rs.70,000/- was paid to the appellant in the year 1979.

Keeping in view the aforesaid facts, learned First Appellate Court has not committed any error in ordering refund of the amount along with Rs.30,000/- as damages.

Hence, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Both the appeals are dismissed.

26.03.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No