

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

RSA No.2582 of 1998 (O&M)

Date of decision : 14.11.2018

Ram Singh

...Appellant

Versus

Jabbar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Singla, Advocate for the appellant.

Mr. G.S. Bhatia, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the Regular Second Appeal against the judgment and decree passed by the learned First Appellate Court reversing the judgment and decree passed by the trial Court resulting in decree for specific performance of the agreement to sell dated 19.04.1988.

Both the Courts below have found that the agreement to sell dated 19.04.1988 executed by the defendant-appellant in favour of the plaintiff has been proved on record. However, learned trial Court dismissed the suit on the ground that the payment of consideration has not been proved, whereas learned First Appellate Court has reversed the judgment passed by the trial Court and held that the payment of consideration has been proved as the defendant had taken a loan from the plaintiff and executed the pronote and receipt dated 11.04.1985 but could not repay the

amount and, therefore, this agreement to sell was executed by specifically mentioning therein that since the amount as promised has not been paid, therefore, the amount of loan alongwith the interest accrued thereon shall be the total consideration for the sale of the property. It was also recorded therein that the possession of the property has also been delivered to the plaintiff.

As per the agreement to sell, the sale deed was to be executed and registered within three months from the date when the previous litigation pending with regard to the property in dispute came to an end. The previous litigation came to an end on 01.12.1990 and thereafter the plaintiff after serving a notice calling upon the defendant to execute the sale deed on 01.04.1991, instituted the present suit on 15.05.1991.

Learned counsel for the appellant while challenging the findings of the learned Appellate Court has submitted that since the previous pronote and receipt dated 11.04.1985 has not been produced, therefore, the agreement (contract) is without consideration and hence void. He submitted that once even the previous payment made pursuant to the pronote and receipt has not been proved, therefore, learned trial Court was correct in dismissing the suit.

On the other hand, learned counsel for the respondent has pointed out that the Scribe of the pronote and receipt dated 11.04.1985 has been examined as DW1 who has proved the entry of the pronote and receipt in his register at Sr. No.232. He had also brought the original register but counsel for the defendant did not challenge the correctness of the aforesaid entry in the cross-examination. He further submitted that Jit Singh, the

attesting witness of the pronote and receipt has been examined to prove that there was a loan transaction and the pronote and receipt was executed.

Learned counsel for the appellant does not dispute that consideration could have been paid in past, present or promised to pay in future. In such circumstances, the Court has to see whether in the present case the payment of consideration has been proved or not. The agreement to sell is in writing wherein it is recorded that there was a previous loan transaction on the basis of the pronote and receipt dated 11.04.1985 and the defendant has failed to repay the same and, therefore, the amount of loan with accrued interest is the consideration for sale of the property. It is further recorded in the agreement to sell that the possession has been delivered. Still further, the existence of the pronote and receipt stand proved from examination of the Scribe and attesting witness as also from the entry in the register of the Scribe which was brought by him while appearing in the evidence. In such circumstances, it was not proper for the trial Court to hold that the agreement to sell (contract) is without consideration.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

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

14.11.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No