

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

RSA No.1974 of 2011 (O&M)

Date of decision : 14.12.2018

Hardeep Singh and another

...Appellants

Versus

Nirvail Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate for the appellants.

Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman, Advocate for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court granting them alternative relief of refund of the earnest money alongwith interest at the rate of 12% per annum till decision and thereafter future interest at the rate of 6% per annum.

Defendant Nos.1 to 3 were owners who alleged to have entered into the agreement to sell with the plaintiffs on 04.03.2003. Defendant Nos.1 to 3 have sold the land vide registered sale deed in favour of defendant No.4. Defendant Nos.1 to 3 did not come forward to contest the suit.

Learned trial Court on appreciation of the evidence found that there is material contradictions in the statement of the marginal witnesses, therefore, the suit was dismissed. However, the First Appellate Court on re-

appreciation of the evidence have found that the execution of the agreement to sell is proved, however, no cogent evidence has been led to prove that the agreement to sell was entered into on 04.03.2003, which was the material issue arising in the present case. The First Appellate Court has noticed that although the alleged agreement to sell has been scribed by a professional Deed Writer but the same had not been entered in his register which is not normal for regular Deed Writer.

Keeping in view the aforesaid facts, learned First Appellate Court has held that the plaintiffs are only entitled to refund of the amount as noticed above.

Learned counsel for the appellants although made a sincere attempt to persuade this Court to take a different view, however, learned counsel could not justify as to why entry of the alleged agreement to sell was not made in the regular register/notebook maintained by a professional scribe.

Keeping in view the aforesaid facts, the discretion exercised by the First Appellate Court does not require any interference.

Regular Second Appeal is dismissed.

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

14.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No