

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

RSA No.2522 of 2012 (O&M)

Date of decision : 19.11.2018

Harbans Singh

...Appellant

Versus

Subhash Chand and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raman Mohinder Sharma, Advocate for the appellant.

Mr. R.S. Randhawa, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.7036-C of 2012

Application is for producing jamabandi for the year 2007-2008
(Annexure A-1) as additional evidence.

Application is disposed of in view of the judgment passed in
the main case.

Main case

Discretion exercised by the First Appellate Court to grant the
refund of the earnest money alongwith interest at the rate of 6% p.a. while
reversing the decree for specific performance of the agreement to sell, has
been impugned in the second appeal.

Learned First Appellate Court has noticed that the property was
under charge of three financial institutions and the copy of the jamabandi

wherein the factum of property being under charge was specifically mentioned, but the agreement to sell does not refer to the aforesaid charge created in favour of the three financial institutions. Still further, the First Appellate Court has exercised the discretion while re-appreciating the evidence.

Learned counsel for the respondents has further drawn the attention of the Court to a plea in the written statement that Mohan Lal had left behind four class-I heirs-two sons, a widow and a daughter. The agreement to sell has been entered into with respect to the entire land left behind by Mohan Lal only by one son and widow.

Although, learned counsel for the appellant submitted that the decree can be passed with regard to undivided share of the defendants, however, keeping in view the fact that the plaintiff-appellant is Ex-Sarpanch and the defendants have already pleaded that their signatures were taken when the then Sarpanch had tried to resolve the dispute between the brother of defendant No.1 with his wife, therefore, this Court does not find that the discretion exercised by the First Appellate Court suffers from any error.

Keeping in view the aforesaid facts cumulatively, this Court does not find any justifiable reason to interfere in the discretion exercised by the First Appellate Court.

Regular Second Appeal is dismissed.

19.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No