

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

**RSA No.4480 of 2012 (O&M)
Date of Order:29.05.2018**

Rajinder Pal

..Appellant

Versus

Bahadur Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate,
for the appellant.

Mr. S.S.Rangi, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgments and decrees passed by both the courts below, trial court dismissed the suit whereas first appellate court has ordered refund of the earnest money along with interest @ 6% per annum.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 09.12.1998 executed by late Sh. Sukhdev Singh, defendant no.1.

Both the courts have found that on the day the alleged agreement to sell was executed, Sukhdev Singh, defendant no.1, was not owner of the property. Courts have found that defendant nos.2 and 3 were declared to be owners of the property in dispute vide judgment and decree dated 27.08.1994 and hence the courts have ordered refund.

Learned counsel for the appellant has submitted that the

judgment and decree dated 27.08.1994 is result of fraud. He further submitted that the decree dated 27.08.1994 was not reflected in the revenue record and, therefore, the plaintiff is not at fault. He further submitted that the interest awarded by the court is on the lower side keeping in view the rise in prices.

On the other hand, learned counsel for the respondents has submitted that the plaintiff was not able to prove that he paid the earnest money as alleged. He further submitted that defendant nos.2 and 3 were declared owners of the land in dispute on 27.08.1994 by the Civil Court and, therefore, defendant no.1 was left with no right, title or interest in the property.

This court has considered the submissions, however, find no substance in the arguments of learned counsel for the appellant.

First of all, plaintiff has not produced on file pleadings which resulted into a judgment and decree dated 27.08.1994, which is alleged to be fraudulent. In the absence of pleadings of the previous suit, the court is not in a position to examine whether the judgment and decree is result of fraud or not. Only the judgment and decree passed by the Court has been placed on the file as Ex.D10 and Ex.D11. The judgment dated 27.08.1994 is a 3 lines judgment wherein the court records that before the Lok Adalat a compromise has been effected and therefore, the suit has been decreed. On the basis of the aforesaid judgment, decree was passed by the court. Since the plaintiff did not produce pleadings of the previous suit, therefore the argument of learned counsel for the appellant cannot be accepted.

Next argument of learned counsel is that the judgment and decree was not reflected in the revenue record till the day the agreement to

sell was executed.

No doubt, the contention is correct, but however mutation of the declaratory decree does not confer ownership. Ownership is declared by a judgment and decree passed on 27.08.1994. On 09.12.1998, defendant no.1 was not owner of the property in dispute. Such being the position, defendant no.1 could not agreed to sell the property.

Next argument of learned counsel is that the judgment and decree dated 27.08.1994 is not legal decree and no title passes through consent decree as it has not been registered. The decree is a compromise decree. In the absence of pleadings of the previous suit, the court is not in a position to return any finding whether pursuant to the previous decree, any title in the immovable property was transferred or not. Therefore, the argument of learned counsel for the appellant does not have any substance.

Last submission of learned counsel is that he paid Rs.5,80,000/- in the year 1998 and due to rise in prices and inflation, the rate of interest @ 6% per annum awarded is meager.

On the other hand, learned counsel for the respondents pleaded that the plaintiff failed to prove payment of the earnest money.

It may be noted that the defendants are not in appeal. There is a decree passed by the learned first appellate court ordering refund which has not been challenged.

Keeping in view the fact that almost 20 years have elapsed and there has been tremendous rise in the prices of the immovable property, therefore, it would be in the interest of justice, if the judgment and decree passed by the first appellate court is modified and the appellant is held entitled to refund of the earnest money of Rs.5,80,000/- along with interest

@ 9% per annum from the date of payment i.e. 09.12.1998 till its realization.

The regular second appeal is dismissed with aforesaid modification.

May 29, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No