

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

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RSA No.4606 of 2012 (O&M)

Date of Decision:-19.11.2018

Kuldeep

... Appellant

Versus

Tulsi Singh

... Respondent

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RSA No.4642 of 2014 (O&M)

Date of Decision:-19.11.2018

Kuldeep

... Appellant

Versus

Tulsi Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mani Ram Verma, Advocate
for the appellant.

Mr. Ramender Chauhan, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

By this judgment, Regular Second Appeal Nos.4606 of 2012 and 4642 of 2014 shall stand disposed of.

Regular Second Appeal No.4606 of 2012 has been filed by the plaintiff-appellant for decree of possession through specific performance of the agreement to sell dated 19.12.1996 which has been declined by both the Courts below. In second appeal i.e. RSA No.4642 of 2014, same appellant is in appeal against decree of permanent injunction passed in favour of respondent No.1 herein. Decree of specific performance of the agreement to sell has been refused on the ground that suit has been filed after a period of

11 years. The Courts have further noticed that neither scibe has been examined nor original witnesses of the agreement to sell have been produced in evidence.

This Court has heard learned counsel for the parties at length. The discretion exercised by the Courts below refusing to order specific performance of the agreement to sell cannot be interfered with, in the facts and circumstances of the present case, however, learned Court has overlooked the fact that defendant No.1 while filing the written statement as well as in the suit for injunction has admitted receipt of Rs.1,00,000/- borrowed as loan which was promised to be paid with Rs.10,000/- as interest after a period of five months.

Although, respondent has taken a plea that the amount has been repaid but failed to lead any evidence to prove that fact. Keeping in view the facts which have come on record, this Court is of the considered view that ends of justice would not met if appellant is held entitled to repayment of the loan amount along with interest @ 9% p.a. from the date of the agreement to sell i.e. 19.12.1996 till realisation.

This order has been passed keeping in view the fact that the signatures on the agreement to sell are not disputed by the respondent No.1.

Thus, regular second appeal No.4606 of 2012 shall stand partly allowed whereas RSA No.4642 of 2014 shall stand dismissed.

19.11.2018

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(ANIL KSHETARPAL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No