

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

**RSA No.2905 of 2013 (O&M)
Date of Order:02.05.2018**

Satnam Singh

..Appellant

Versus

Darbara Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Karan Bhardwaj, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while granting alternative relief to the plaintiff to refund the earnest money along with interest instead of granting decree for possession by way of specific performance of the agreement to sell.

Learned trial court has recorded the following reasons after appreciation of the evidence available on the file:-

- (i) The earnest money and the additional payment alleged to have been made was in fact a loan transaction keeping in view the fact that the defendant had also mortgaged the same land to secure the loan and son of the defendant was ill.
- (ii) Although, in the agreement to sell it is recorded that possession has been delivered, however when the defendant appeared in the witness box he denied that fact

and even sought possession while filing the suit.

- (iii) Plaintiff when appeared in the witness box concealed more facts rather than disclosing it.

The court has noticed that the plaintiff is not trustworthy witness. He does not know what was the rate of the land in the village. He does not know to how many persons he has lend the money.

The findings of the learned trial court have been affirmed by the learned first appellate court.

In the present case, courts below have exercised discretion as available under Section 20 of the Specific Relief Act, 1963. Such exercise of discretion is neither found arbitrary nor perverse. The reasoning assigned while exercising the discretion appears to be based upon sound and judicial principles and in accordance with law.

Hence, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

May 02, 2018
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(ANIL KSHETARPAL)
JUDGE

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