

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

RSA No.1623 of 2016 (O&M)

Date of decision : 25.05.2018

Pritam Singh

...Appellant

Versus

Sukhdev Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek K. Thakur, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.4491-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 45 days in filing the present appeal is condoned.

Application is allowed.

Main Case

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while granting the alternative relief to the plaintiff decreeing the refund of the earnest money alongwith the interest.

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 13.12.2004 with respect to the land measuring 16 kanals. The agreement to sell was in writing and is

proved as per the finding of the Courts below. Both the marginal witnesses of the agreement to sell have been examined. However, both the Courts below have refused to grant discretionary relief of specific performance of the agreement to sell on the ground that the property belongs to Harijan (Scheduled Caste) and it is not permissible to transfer the property to a non-Harijan.

Learned counsel for the appellant has submitted that once the agreement to sell was void, even decree for refund of the amount cannot be ordered.

This Court has considered the submission. In the present case, the payment of the amount is proved. No one can be permitted to get unjust enrichment. Once the payment has been proved, even if the agreement to sell cannot be specifically performed, the alternative relief of refund of the amount can always be ordered.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

25.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No