

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

RSA No.1655 of 2016 (O&M)

Date of decision:19.11.2018

Krishan Kumar

... Appellant

Vs.

Umesh Gupta and others

... Respondents

RSA No.1657 of 2016 (O&M)

Krishan Kumar

... Appellant

Vs.

Umesh Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepinder Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine will dispose of two regular second appeals bearing Nos.1655 and 1657 of 2016 preferred by the defendant arising out of decision rendered in one civil suit bearing No.71 of 2008 preferred by three plaintiffs; Umesh Gupta, Meenakshi Gupta wife of Umesh Gupta and Ajay Gupta claiming recovery of Rs.2,44,759/- i.e. Rs.1,79,969 as principal amount and Rs.64,790/- interest calculated @ 12% per annum from 30.05.2005 to 27.08.2008 and future interest @ 12% per annum on the premise that defendant alongwith plaintiffs had entered into an agreement to sell dated 30.06.2005 in respect of shop alongwith fitting and fixtures for a

total sale consideration of Rs.15,00,005/- and received an advance money of Rs.2,00,000/- from plaintiff no.1.

However, plaintiff no.2 owing to matrimonial discord, at that point of time with the plaintiff, refused to vacate the concerned shop and another agreement dated 13.07.2005 in respect of the same property was entered into with the defendant and plaintiff no.2 for a total sale consideration of Rs.6,70,000/- and a sum of Rs.70,000/- was paid by plaintiff no.2-wife.

It is a matter of record that appellant-defendant had registered the sale deed of aforementioned shop on 30.08.2005 in favour of plaintiff no.2. It is in this background of the matter, the plaintiffs claimed the aforementioned amount was paid by way of cheque but did not lay any claim to the sum of Rs.2,00,000/- paid at the time of execution of agreement to sell dated 30.06.2005, as the same had become time barred.

The trial Court decreed the suit by confining the recovery amounting to Rs.50,000/- qua plaintiff no.1 but the Lower Appellate Court modified the decree confining it to Rs.1,05,969/- in favour of plaintiffs no.1 and 3 along with interest @ 6 ½ % per annum from the date of filing of the suit till its realization.

Learned counsel appearing on behalf of the appellant-defendant submitted that plaintiffs have been deprived of the actual price of the property having agreed to be sold by way of an agreement to sell dated 30.06.2005 and was thus, distressed to sell for a paltry amount of Rs.6,70,000/- on 30.08.2005 in favour of plaintiff no.2. No doubt, the

plaintiffs have not staked any claim with regard to Rs.2,00,000/- but are not entitled to balance amount as the same was deemed to have been forfeited.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, no counter claim or any legal notice in this regard of forfeiture or declaration had been filed or claimed.

It is a matter of record that amount awarded by the Lower Appellate Court of Rs.50,000/- each paid by plaintiffs no.1 and 3 was by way of cheque. Since the appellant-defendant had already parted with the ownership of the property, plaintiffs no.1 and 3 had no other choice but to seek recovery of amount. This is what the import of the judgments and decrees of the Courts below.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No