

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

RSA No.364 of 2016 (O&M)

Date of decision:04.12.2018

Nehru Lal

... Appellant

Vs.

Kala and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Lamba, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in partial decree of suit for declaration, whereby, the respondent-plaintiffs/vendors had sought the cancellation of the agreement to sell dated 27.05.2011 in respect of land measuring 9 kanals 18 marlas.

It was alleged that respondent-plaintiffs had entered into the aforementioned agreement with the appellant-defendant being vendee for a total sale consideration of ₹37,50,000/- and received an amount of ₹4,00,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 15.09.2011 but the sale deed could not be executed as the property subject matter of the agreement to sell was mortgaged for obtaining the loan of ₹4,90,000/-.

The defendant opposed the plea of declaration by admitting the contents of the agreement to sell and payment of total sale consideration,

much less earnest money. It was alleged that defendant was ready to perform his part of the contract after getting the suit land partitioned and clear title.

The trial Court on the basis of evidence brought on record partly decreed the suit by cancelling the agreement to sell but did not grant the liberty to the plaintiff to forfeit the amount of earnest money. The defendant in appeal before the Lower Appellate Court was also not successful.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the appellant-defendant submitted that no doubt, the plaintiffs had not filed the suit for recovery or specific performance, thus, the suit was not maintainable as sale deed can always be executed in respect of land de hors it was subjected to charge by way of mortgage. The interest of the mortgagees could have been kept intact. Even the sale deed qua un-partitioned share can always be executed. There is no dispute with regard to un-clear title.

I have heard the learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below.

The interest of the appellant-defendant in the absence of any counter claim or separate suit, is still being protected regarding forfeiture of earnest money, particularly when the subject matter of the property was mortgaged for an amount of ₹4,90,000/-, though in such circumstances, on receipt of balance sale consideration, the plaintiffs would have discharged

the liability of loan or redeemed the mortgage, in accordance with law.

Be that as it may, in the absence of readiness and willingness on behalf of the defendant, findings of facts and law cannot be faulted with being almost equitable relief. No ground is made out for interference in the impugned judgments and decrees.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 04, 2018
savita

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