

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2712 of 2015 (O&M)

Date of decision: 11.01.2018

Swaran Dass and another

..... Appellants

Versus

Mohinder Pal Saini and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vipin Mahajan, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants No.1 and 2-appellants are in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for specific performance of the agreement to sell dated 17.11.2000, 03.05.2001 and 25.05.2001 with respect to the land measuring 197 kanals and 16 marlas. It was the pleaded case of the plaintiff that he had paid a sum of Rs.6,10,000/- as earnest money.

Originally the property was owned by defendants No.3 to 7. They had entered into an agreement to sell with defendants No.8 and 9. Defendants No.8 and 9 in turn had further entered into an agreement to sell with defendants No.1 and 2. Defendants No.1 and 2 in turn had still further entered into an agreement to sell with the plaintiff.

Both the Courts after appreciating the evidence available on the file rejected the prayer for specific performance of the agreement to sell on the ground that such agreement is no agreement in the eyes of law

because a writing has been executed on the back of the agreement to sell in favour of defendants No.1 and 2. However, both the Courts have relied upon a receipt executed on the back of the agreement to sell in favour of defendants No.1 and 2 where payment of Rs.6 lacs is acknowledged. Defendants No.1 and 2 have signed the aforesaid receipt. Hence, the Courts have ordered refund of the amount paid by the plaintiff.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted that once there was no valid agreement as found by the Court, refund could not be ordered.

I have heard the submission. In first blush, the argument appears to be attractive, however, on close scrutiny, there is no force in it. The Courts below have only done equity between the parties as Rs.6 lacs is proved to have been failed to defendants No.1 and 2 under an agreement which was found to be not valid. The Court has only ordered refund thereof.

Learned counsel for the appellants has further submitted that once the suit for specific performance was being dismissed, the refund could not be ordered. In the considered opinion of this Court, even this argument of learned counsel does not have any substance. In a suit for specific performance in alternative, the plaintiff is entitled to plead for refund of the earnest money. In the present case, the suit was filed for specific performance. It is a different matter that the agreement between the parties was held to be illegal. Anyhow, the plaintiff who has parted

with the money is liable to be reimbursed.

In view thereof, there is no ground to interfere in the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

11.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No