

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

RSA No.4415 of 2016 (O&M)

Date of decision : 20.07.2018

Mohan Singh

...Appellant

Versus

Dhumman Singh (deceased) through his LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaideep Verma, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11539-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 28 days in refiling 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 decreeing the suit for possession by way of specific performance of the agreement to sell dated 23.07.2004 to the extent of share of defendant No.1-appellant i.e. 57/160th share.

Two persons i.e. defendant Nos.1 and 3 through defendant No.2 entered into an agreement to sell with regard to half share of total land

measuring 4 kanals and 9 marlas. Defendant No.3 was minor and the agreement to sell was entered into through her mother-Pushpa Devi-defendant No.2. Since, defendants did not perform their part of the contract, therefore, the suit was filed. The defendants pleaded that their signatures were taken on the blank papers and those blank papers have been misused in forging the agreement to sell. It was further pleaded that the plaintiff has already purchased certain property from the defendants.

Both the Courts below on appreciation of the evidence have found that the agreement to sell is proved on file and the plaintiff was ready and willing to perform his part of the contract. However, both the Courts below, while decreeing the suit has decreed it to the extent of share of defendant No.1-appellant i.e. 57/160th share in the land measuring 4 kanals and 9 marlas.

Learned counsel for the appellant has submitted that the Courts have committed an error in making adjustment of the entire earnest money paid i.e. ₹1,30,000/-, although, the payment was received by two persons i.e. defendant Nos.1 and 2, therefore, adjustment should have been made only with regard to half of the payment received as earnest money. He further submitted that as per the agreement to sell, the possession of the property was already delivered. Still, the plaintiff while filing the suit has prayed for decree for possession.

With regard to the first argument of the learned counsel, it may be noted that defendant Nos.1 and 2 are closely related as defendant No.2 is brother's wife of defendant No.1, whereas defendant No.3 is nephew of defendant No.1. As per the concurrent findings of the Courts below, the

plaintiff has already paid ₹1,30,000/- to the appellant. Still further, learned counsel for the appellant could not draw attention of the Court to the fact that this submission was ever raised before the First Appellate Court. In such circumstances, the appellant cannot be permitted to make a submission which was not raised before the First Appellate Court.

With regard to the second argument of the learned counsel, it is suffice to notice that the additional relief which has been sought for, even if superfluous, would not make any difference in the substantive relief. The substantive relief, in the present case, is decree for specific performance of the agreement to sell. If the plaintiff is already in possession, the decree for possession which has been passed, would be superfluous, however, since the plaintiff has filed a suit for possession, the Court has passed a decree.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

20.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No