

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

RSA No.478 of 2016 (O&M)

Date of decision: 27.08.2018

Rajpal

..... Appellant

Versus

Isham Singh (deceased) through LRs Batheri
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for possession by way of specific performance of the agreement to sell dated 21.02.2004. Both the Courts have found that the agreement to sell is suspicious and the defendants' plea that there is a loan transaction, has been admitted and refund of Rs.50,000/- along with appropriate rate of interest has been ordered.

Learned counsel for the appellant submitted that the execution of the agreement to sell is admitted and therefore, the specific performance should have been ordered. However, on a pointed query from the Court as to why the suit was filed after almost on the last day of the limitation i.e. 3 years from the date agreed for execution and registration of the sale deed, counsel has submitted that his client was orally requesting the defendant but the defendant did not come forward.

This Court has considered the submission. It is not normal to wait for a complete period of 3 years before filing the suit for possession by way of specific performance of the agreement to sell. In the present case, the extended target date for execution and registration of the sale deed was 10.06.2004 whereas the suit was filed on 09.06.2007 i.e. just 2 days before the period of limitation for filing the suit was to expire.

It is well settled that the relief of specific performance of the agreement to sell is discretionary and both the Courts after appreciating the evidence have found that relief of specific performance cannot be granted.

Learned counsel for the appellant has further submitted that the learned Courts have only ordered refund of Rs.50,000/- whereas as per the agreement to sell and endorsement, total amount of Rs.1,30,000/- has been paid.

This issue has been examined by the Courts and have found that the plaintiff has failed to prove the payment of the amount of Rs.1,30,000/-. The Courts below have decreed a suit for recovery of Rs.50,000/- on the ground that the defendants have admitted the receipt of Rs.50,000/-.

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

Appeal is dismissed.

27.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No