

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

**(1) RSA No.4078 of 2015 (O&M)
Date of Order:23.03.2018**

Mukhtiar Singh and others

..Appellants

Versus

Mohinder Singh

..Respondent

(2) RSA No.5065 of 2015 (O&M)

Mohinder Singh

...Appellant

Veresus

Mukhtiar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Gulshan Sharma, Advocate,
for the appellants (in RSA NO.4078 of 2015)
for the respondents (in RSA No.5065 of 2015)**

**Mr. Sanjeev Kumar Arora, Advocate,
for the appellant (in RSA No.5065 of 2015)
for the respondent (in RSA No.4078 of 2015)**

ANIL KSHETARPAL, J(Oral)

By this judgment, two appeals i.e. RSA No.4078 of 2015 and 5065 of 2015 shall stand decided as both the appeals arising out of the same suit.

Plaintiff as well as defendants are in regular second appeal, against concurrent findings of fact arrived at by the courts below.

A suit for specific performance of the agreement to sell dated 23.07.2003 was filed by the plaintiff. Defendants denied the execution of any agreement to sell by their predecessor i.e. late Sh. Har Singh.

Both the courts after appreciating the evidence available on the file have recorded a finding that although technically the agreement to sell is prove, however, there are certain circumstances which does not entitle the plaintiff to relief of specific performance of the agreement to sell. The courts have ordered refund of the earnest money along with interest @ 6%.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the defendant-appellant in RSA No.4078 of 2015, has submitted that the agreement to sell is result of forgery as rather than purchasing a non judicial stamp paper worth Rs.300/-, adhesive stamps have been affixed. He has submitted that no evidence has been led to prove that non judicial stamp papers were not available. He has also drawn the attention of the Court to various litigation filed by the plaintiff and has asserted that the plaintiff is a professional litigant and keeps defrauding with the innocent residents of the area.

On the other hand, learned counsel for the plaintiff-appellant has submitted that once the execution of the agreement to sell is proved, the courts below have erred in refusing the relief of specific performance of the agreement to sell. Learned counsel for the appellant has drawn the attention of the court to the notification dated 02.04.1997. The aforesaid notification issued under the Stamp Act only prescribes that whenever non judicial stamp papers are not available for 1 or 2 rupees, the normal paper can be used in its place by affixing adhesive stamps of Rs.1 and 2. This notification does not bar the usage of adhesive stamps for non judicial stamp papers worth Rs.300/-

Argument of learned counsel for the defendant is that no evidence has been brought on record to prove that the non judicial stamp papers worth Rs.300/- were not available. The arguments appears to be attractive on first blush, however, on close scrutiny, find no force. The agreement to sell has been scribed after getting the papers issued from the stamp vendor. A layman can only go the stamp vendor for purchase of the stamp paper. He is not expected to enquire whether the non judicial stamp papers are available and whether the stamp vendor is issuing him the papers with adhesive stamps, although he is in possession of non judicial stamp papers. In any case, the learned courts below have only ordered refund of the earnest money. Hence this court does not find any substance in the argument of learned counsel for the defendants-appellants.

Learned counsel for the plaintiff-appellant has pressed for specific performance of the agreement to sell. Both the courts have noticed that the time gap between the execution of the agreement to sell and the date fixed for execution and registration of the sale deed is abnormally long. The agreement to sell is dated 23.07.2003, whereas the target date for execution and registration of the sale deed is 15.06.2006. i.e. after a period of approximately 3 years.

Coupled with this, out of total sale consideration of Rs.7,70,312.50/-, Rs.6,50,000/- is stated to have been paid at the time of execution of the agreement to sell. Once approximately 85% of the amount was paid, the courts have found that the date for execution and registration of the sale deed fixed after a period of 3 years is not normal. The courts have recorded a finding that the document executed was in fact a security document for securing money transaction. The courts have further noticed

that although it is mentioned in the agreement to sell that possession has been delivered to the plaintiff, however, revenue record does not prove the aforesaid fact. The courts have also appreciated the evidence available on the file and found that the plaintiff is not in possession of the same.

The relief of specific performance of the agreement to sell is discretionary as per Section 20 of the Specific Relief Act. The discretion is to be exercised by the courts based on sound reasoning in accordance with law. This court does not find that the discretion exercised by the court was either arbitrary or suffered from illegality.

In view of the aforesaid, both the regular second appeals are dismissed while upholding the judgment and decree passed by the first appellate court.

Plaintiff shall be entitled to recover the amount of earnest money paid along with the interest as awarded by the learned first appellate court.

March 23, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No