

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

**RSA No.5610 of 2016 (O&M)
Date of Decision.16.11.2018**

Veena Talwar and others

...Appellants

Vs

Harkesh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate and
Ms. Bhanvi Sood, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in defending the appeal preferred by the defendants whereby the suit for recovery filed by the plaintiffs, which was decreed by the trial Court, has been dismissed.

The plaintiffs claimed recovery of ₹38,000/- along with interest from the date of execution of the agreement to sell dated 01.10.2008 registered in the office of Sub Registrar. The suit property was agreed to be sold for a total sale consideration of ₹21 lacs per care and in lieu thereof, defendants had received a sum of ₹3,80,000/- i.e. ₹3 lakhs vide DD NO.000571 and ₹80,000/- in cash. As per the terms and conditions of the agreement to sell, the land was to be partitioned by the seller before the execution and registration of the sale deed i.e. 01.01.2009. Despite the fact that plaintiffs marked presence before the office of Sub-Registrar, defendants did not come forward and in the absence of fulfillment of the terms and conditions of the agreement vide legal notice dated 21.09.2011, earnest money of ₹3,80,000/- was sought to be returned.

The defendants opposed the suit and stated that they never agreed to partition the land in dispute prior to the execution of the sale deed on the agreed date. Defendants appeared before the Registrar but the plaintiffs did not come forward. The date for execution and registration of the sale deed was extended to 20.01.2009 and separate writing to this effect was also recorded.

Both the parties led evidence in support of their respective claims.

The trial Court relied upon the plaintiffs' evidence and decreed the suit but the lower Appellate Court, as noticed above, set aside the judgment and decree of the trial Court.

Mr. Aditya Jain, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court erred in reversing the well reasoned judgment and decree of the trial Court as the defendants failed to prove that they had performed their part of the agreement, in the absence of partition of land. In such circumstances, the remedy for the plaintiffs was only to seek refund. The plaintiff, Parveen Talwar died on 20.12.2008 and this fact was not denied by the defendants. Defendant-Harkesh stated that he was not ready and willing to perform his part of the contract, which was sufficient for the lower Appellate Court to concur with the finding of fact arrived by the trial Court.

I am afraid aforementioned argument of Mr. Jain is not sustainable, for, the plaintiffs failed to prove readiness and willingness on the extended date i.e. 20.01.2009. Once readiness and willingness had not been proved, earnest money deemed to have been

forfeited. In such circumstances, trial Court could not have even ordered for refund of the amount in a simplicitor suit for recovery. The plaintiffs were aware of this fact and intentionally chose not to seek the specific performance of agreement to sell. The lower Appellate Court being the last court of fact and law, in my view, has appreciated the evidence threadbare to form a different opinion than the one arrived at by the trial Court. It is no understandable as to how the plaintiffs purchased the stamp papers on 28.01.2009 when the target date as per the averments in the plaint was 01.01.2009 which was extended to 20.01.2009. The aforementioned point had also been noticed while reversing the finding rendered of the trial Court.

As an upshot of my finding, I do not intend to subscribe to the argument raised by Mr. Jain to form a different opinion than the one arrived by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No