

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA No.4279 of 2015 (O&M)

Date of decision: 19.12.2018

Dalip Singh

..... Appellant

Versus

Prem Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajinder Goyal, Advocate
for the appellant.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact in his favour.

It is a strange appeal filed by the plaintiff after decree for possession for specific performance of the agreement to sell has been passed in his favour. Both the Courts have found that the property is mortgaged with bank on account of a loan taken by the owner. Learned trial Court while passing the decree has granted relief of specific performance subject to clearance of the bank loan by the plaintiff as the loan amount was more than the balance amount payable with right to recover the amount from the defendant. First appeal against the aforesaid judgment has also been dismissed by the First appellate Court.

Learned counsel for the appellant has submitted that the appellant cannot be forced to pay more than the amount due and payable

under the agreement to sell. He submitted that he has only to pay Rs.85,000/- whereas the loan amount is more than Rs.4,00,000/-.

Learned counsel for the appellant was specifically asked whether appellant is interested in the decree of specific performance or not, he stated that he has instructions to defend the decree but at the same time, get-rid of the directions.

In the considered view of this Court, once the property is subject matter of prior mortgage, the loan against the property remains as a charge attached to the property. In such circumstances, learned Civil Judge has correctly passed the order directing decree for possession by way of specific performance of the agreement to sell subject to clearance of loan by the defendant and in case he fails to do so, it shall be payable by the plaintiff with right to recover the amount from the defendant.

In the considered view of this Court, the trial Court has already passed a just and fair decree which needs no interference.

Hence, the appeal is dismissed.

19.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No