

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.236 of 2014 (O&M)
Date of Order: 11.12.2018

Naib Singh and others

..Appellants

Versus

Gagan Gopal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Suvir Sidhu, Advocate,
for the appellants.

Mr. Siddharth Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

On 20.01.2014, learned counsel appearing for the appellant had made following submissions which prompted the Judge to issue notice of motion. The order is extracted as under:-

“Learned counsel for the appellants submits that along with the appeal an application under Order 41 rule 27 read with Section 151 CPC was moved by the appellants, however, without passing any order on the application, appeal has been dismissed. He further contends that no separate order, accepting or rejecting the application, has been passed.

Notice of motion for 22.3.2014.”

It is undisputed that the aforesaid contention was factually incorrect as the first appellate court had decided the application for additional evidence on 13.11.2003.

With the consent of learned counsel for the parties, the arguments in the main appeal has been heard at length.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below while decreeing refund of earnest money along with interest @ 9% from the date of agreement to sell till filing of the suit and pendente lite and future interest @ 6% till realization.

There was an agreement to sell between the parties dated 03.06.2005, which recorded that an amount of Rs.20,00,000/- had been paid as earnest money. The agreement to sell was with respect to land measuring 12 bighas and 16 biswas. Thereafter, the date for execution and registration of the sale deed which was originally fixed for 01.12.2005, was extended to 21.12.2005 when the plaintiffs visited the office of Sub-Registrar and since defendants did not turn up, therefore, got his presence marked. Thereafter, defendants sold the property in dispute vide sale deed dated 01.02.2006.

Both the courts after appreciating the evidence have decreed the suit qua refund of the earnest money as noticed above.

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

Learned counsel appearing for the appellants submitted that the plaintiffs were ready and willing to perform their part of the contract and therefore, the earnest money could not be ordered to be refunded.

This court has considered the submission in the light of findings of fact arrived at by the courts below and found that both the courts have rightly concluded that plaintiffs were ready and willing to perform

their part of the contract as they even visited the office of Sub-Registrar on the extended target date i.e. 21.12.2005 and got attested an affidavit wherein it was specifically sworn in that plaintiffs are ready and willing to perform their part of the contract and have brought the balance sale consideration. Hence, there is no substance in argument of learned counsel for the appellants.

Keeping in view the aforesaid findings of fact and the evidence on record, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below, the regular second appeal is dismissed.

December 11, 2018
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(ANIL KSHETARPAL)
JUDGE

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