

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

**RSA No.6717 of 2016 (O&M)
Date of Decision.06.12.2018**

Jagjit Singh

....Appellant

Vs

Chhota Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. L.S. Sidhu, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.17522-C of 2016

For the reasons stated in the application, delay of 229 days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.6717 of 2016

The appellant-plaintiff has not been successful before the trial Court in claiming discretionary relief under Section 20 of the Specific Relief Act but lower Appellate Court in appeal, taken by the defendant, confined it to alternative relief.

The appellant-plaintiff claimed specific performance of agreement to sell dated 29.11.2008 in respect of land measuring 9 bighas, agreed to be sold at the rate of ₹1,80,000/- per bigha against the earnest money of ₹10 lakhs. The stipulated date for execution and registration was fixed as 30.11.2009. The suit was filed on 04.12.2009 after marking presence, vide Ex.P4, before the Registrar.

The defendant admitted the execution of agreement to sell but clarified it to be security, because in order to send his son

abroad as well as for the treatment of the wife, sum of ₹8 lakhs was taken as loan from the plaintiff. Agreement to sell was alleged to have been attested by two witnesses, Lachhman Singh and other Sukhjinder Singh. Plaintiff examined Lachhman Singh as PW2 whereas Sukhjinder Singh has been examined by the defendants as DW1 and the scribe.

Mr. Sidhu, learned counsel appearing on behalf of the appellant submitted that there is gross mis-reading of the testimony of PW1 as well as PW2 Lachhman Singh. PW2 did not say that it was a loan transaction extended to Chhota Singh for sending his son abroad or for treatment of the ailing wife. One line here and there in the cross-examination of Lachhman Singh is immaterial as the pith and substance of the examination-in-chief and cross-examination leads to irresistible conclusion that agreement to sell was entered into, much less, ₹10 lakhs was paid as the earnest money. In such circumstances, the lower Appellate Court ought not to have tinkered with the finding of fact and law arrived at by the trial Court.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sidhu, for, testimony of Lachhman Singh read over, during the course of hearing, revealed that son of Chhota Singh had gone abroad after 29.11.2008 i.e. after date of agreement and ailment of wife. Other suggestion was to obtain a loan transaction of ₹10 lakhs with interest as stated in the written statement. No doubt, plaintiff filed the suit for specific performance of agreement to sell dated 29.11.2008 but he was not aware of the khasra number or the

takks. Any sane person, who is actually entered into agreement to sell would not feign ignorance.

In view of the aforementioned observations, the lower Appellate Court being the last court of fact and law has rightly granted alternative relief entailing interest @12%. No substantial question of law arises for determination by this Court. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

December 06, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No