

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.789 of 2016

Date of Decision: May 14, 2018

Inderpal Singh

...Appellant

Versus

Amarjit & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Sharwan Sehgal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby instead of granting relief under Section 20 of the Specific Relief Act, alternative relief of refund of ₹1,00,000/-, has been ordered.

Mr.Sharwan Sehgal, learned counsel representing the appellant-plaintiff submitted that an agreement to sell dated 3.11.2006 was executed by defendant No.1 in contemplation by acquiring the right in the property owing to the demise of the predecessor-in-interest for a total sale consideration of ₹4,50,000/-. The area agreed to be sold was 200 sq.yards and the earnest money of ₹1,00,000/- was paid vide cheque No.352877 dated 7.11.2006. The suit was filed on 31.10.2009 proceeded by a legal notice. The defendants did not appear and were proceeded *ex-parte*.

He further submitted that the trial Court dismissed the suit on the ground that defendant No.2 was not authorised to sell the property in

favour of defendant No.1 nor the mutation was sanctioned. He also submitted that he may be permitted to withdraw the suit as the time was not the essence. Suit could be filed as per the provisions of Article 54 of the Limitation Act.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, it has been categorically proved that defendant No.1, at the time of execution of the agreement, had not acquired the title. On a specific query raised, it is revealed that the property is still mutated in favour of defendant No.1. There is no contract, therefore, the plaintiff could not seek specific performance of the agreement against defendant No.2, who was the actual owner of the property. Refund of earnest money was only remedy for the Court, which has been correctly exercised while going through the aforementioned evidence.

For the reasons stated above, there is no illegality or perversity in the findings under challenge. No ground for interference is made out. Resultantly, the appeal is dismissed.

May 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No