

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1827 of 2017 (O&M)
Date of Decision: April 26, 2018.**

Dev Singh

.....APPELLANT(s).

VERSUS

Manjit Kaur

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ravish Bansal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Appellant-plaintiff filed suit for possession by way of specific performance of the agreement dated 17.06.2002 executed by respondent-defendant to sell 2 kanals of land situated in village Madhoke, Tehsil and District Moga for a sale consideration of ₹62,250/-, out of which an amount of ₹55,000/- was paid as earnest money.

Learned Additional Civil Judge (Senior Division), Moga upheld the plea of appellant-plaintiff that defendant had executed the agreement dated 17.06.2002 but declined to grant the relief of specific performance of the agreement for the reasons as mentioned in para 19 of the judgment, which is reproduced as follows:-

“Plaintiff has claimed relief of possession by way of specific performance of the agreement to sell dated

17.06.2002 and in the alternative, recovery of Rs.1,10,000/- i.e. Rs.55,000/- on account of earnest money and Rs.55,000/- on account of damage along with interest @ 24% per annum. Plaintiff has though proved on record the execution of agreement to sell dated 17.06.2002 but it is to be seen whether the agreement to sell dated 17.06.2002 was executed with intention to sell so as to entitle plaintiff to the relief of specific performance. Agreement to sell dated 17.06.2002 was executed for 2 kanals of land which was agreed to be sold @ Rs.2,50,000/- per acre with sale consideration of two kanals approximately being Rs.62,250/-. Earnest money of Rs.55,000/- stood paid at the time of execution of agreement to sell dated 17.06.2002 with remaining amount being Rs.7250/-. The stipulated date which was fixed for the purpose of execution of sale deed was 30.05.2005 i.e. after nearly three years of the execution of the agreement to sell. No possession was ever delivered to plaintiff as plaintiff claims relief of possession through the present suit. So when possession was not delivered, though there is a recital of delivery of possession in the agreement to sell, it appears that there was no intention of selling the property by defendant to plaintiff or on the part of plaintiff to purchase the property. Defendant was never exclusive owner of the suit land so as to deliver the possession of 2 kanals to plaintiff though it had been mentioned in agreement. So, in such circumstances, when this suit has been filed after five years of the date of execution of the agreement to sell and approximately two years of the stipulated date fixed for execution of the sale deed, I find that agreement to sell was in deed executed to secure the payment of Rs.55,000/- paid to defendant by plaintiff. So, I do not find it reasonable to grant plaintiff the relief of specific

performance.”

Not satisfied, the appellant filed appeal, which was also dismissed by Additional District Judge and the judgment and decree passed by learned Additional Civil Judge, Moga was affirmed.

Learned counsel for the appellant has argued that the execution of the agreement was duly proved and the respondent-defendant has nowhere taken the plea that this document was executed as a security document and the Courts below without looking into this aspect, have declined specific performance of the agreement despite the fact that suit was filed within the period of limitation.

As per case of the appellant-plaintiff, he had paid about 90% of the sale consideration and despite recital in the agreement that possession of the suit land has been delivered, he had not taken possession of the same. For a meagre sale consideration of ₹7,250/-, a date of 3 years was allegedly fixed for execution of the sale deed and even after the expiry of that date, the appellant waited for another two years to file this suit. All this is reflective of the fact that the intention of the parties was never to get the sale deed executed. Even if, a specific plea has not been taken by the respondent-defendant that the agreement was executed towards some loan or as security document, still keeping in view the facts and circumstances of the case, it was not incumbent upon the Courts below to grant the relief of specific performance of the agreement to the appellant-plaintiff. The Courts below have rightly exercised their discretion while allowing alternate relief of return of earnest money with interest and I find no reason to interfere with the findings of the Courts below.

No substantial question of law requiring determination arises in this appeal, which have no merits.

Dismissed.

April 26, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*