

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

**RSA No.5808 of 2014(O&M)
Date of Decision.31.10.2018**

Mohan SinghAppellant
Vs
Pardeep Kaur and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sharma, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby the suit of the appellant-plaintiff seeking specific performance of agreement to sell dated 20.05.2004 has been partly decreed by confining to recovery of ₹2 lacs along with interest @6% per annum.

The case set out in the plaint was that Gurnam Singh had agreed to sell the land measuring 8 kanals 17 marlas @₹4 lakhs per acre against the receipt of ₹2 lakhs as earnest money. The stipulated date for registration and execution of the sale deed was 31.05.2005. Realizing that the seller was attempting to part with the ownership, suit for injunction was filed wherein injunction order was issued restraining him to alienate the suit land but despite that vide sale deed dated 28.06.2006, respondent No.2 to 4 have acquired title.

Learned counsel appearing on behalf of the appellant submitted that plaintiff has been only non-suited on the ground that factum of his being commission agent has not been disclosed, therefore, possibility of using the blank thumb marked papers and the same being used for the purpose as indicated in the plaint cannot be ruled out.

Acknowledgment of Mukhtiar Singh endorsing payment of ₹2 lakhs having been received by the seller was precautionary step that could not have been a ground for declining the discretionary relief, as the thumb impression had not been controverted by the defendant. Defendant had after appearance proceeded ex parte that itself is a clincher of avoiding the liability. In these circumstances, discretionary relief was required to be granted.

I am afraid aforementioned argument of learned counsel appearing for the appellant is not sustainable, for, in an ordinary agreement to sell, witness would not separately endorse of an agreement to sell *vis-à-vis* the factum of receipt of earnest money by the vendor, particularly when there is recital of receipt of the earnest money. Factum of plaintiff is commission agent had also not been denied. It has been normal practice amongst the commission agents and the farmers to use the blank papers and convert into agreement to sell. This is what is the import of the finding of lower Appellate Court. Since the thumb impression on the agreement to sell had not been controverted, relief of refunding of earnest money of ₹2 lakhs along with interest is the most appropriate.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018
Pankaj*

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No