

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

RSA No.2539 of 2018 (O&M)

Date of Decision: May 01, 2018

Malkiat Singh

...Appellant

Versus

Kulwant Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.P.Soi, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit for specific performance instituted by the plaintiff-appellant was dismissed.

The case of the plaintiff was that on 4.5.2009 defendant no.1 entered into an agreement to sell his land measuring 8K in favour of the plaintiff @ Rs.6,00,000/- per acre. Defendant No.1 received a sum of Rs.5,00,000/- from the plaintiff as earnest money. The sale deed was agreed to be executed by 3.5.2010. On 3.5.2010 the date for execution of the sale was mutually extended to 30.3.2011. The other terms and conditions of the agreement were kept intact. On 30.03.2011 the plaintiff remained present in the office of Sub Registrar Shahkot alongwith balance sale consideration for getting the sale deed executed. However, the defendant did not turn up. The plaintiff got his presence marked in the office of Sub Registrar Shahkot and also got his affidavit scribed and attested from the Executive Magistrate-cum-Sub Registrar Shahkot. He served a notice dated 2.4.2011 calling upon

the defendant to perform his part of the contract. On his failure, the suit was instituted.

The case of the defendant no.1 was that an agreement to sell was executed between the plaintiff and the defendants on 19.11.2007. The agreement dated 4.5.2009 was executed as a further extension of the original agreement dated 19.11.2007. The defendant did not intend to sell his agricultural land. He had borrowed a sum of Rs.5,00,000/- from the plaintiff @ 2% per month. The agreement dated 19.11.2007 was executed as security for this amount. The defendant had been returning the interest on the borrowed amount because of which the agreement dated 19.11.2007 was extended from 18.11.2008 to 18.02.2009 and further to 4.5.2009. Endorsement in this regard were made at the back of the agreement. The agreement dated 4.5.2009 was executed as further extension of the original agreement which is why the rate of the land has been mentioned at Rs.6,00,000/- per acre and the amount of earnest money shown to have been received is Rs.5,00,000/- as in the original agreement dated 19.11.2007. It was further pleaded that the loan amount of Rs.5,00,000/- alongwith interest was returned by the defendant no.1 to the plaintiff on 3.1.2011 in the presence of witnesses and an endorsement duly signed by the plaintiff, the defendant and the witnesses was made at the back of the 3rd page of the original agreement which was returned to the defendant by the plaintiff. However, the agreement dated 4.5.2009 was not returned to the defendant. It was claimed that nothing was due from the defendant to the plaintiff.

Defendant no.3- the bank contested the suit by pleading that it was

27.7.2010 executed by defendant no.1 in favour of the bank as security for an agricultural loan of Rs.10,00,000/- availed of by defendant No.1.

Based on the evidence the Ld. Trial Court concluded that the case of the plaintiff was demolished by the evidence of PW-1 Malkit Singh (plaintiff himself). He admitted in his cross examination that on 4.5.2009 the defendant had returned to him the amount of Rs.5,00,000/- as mentioned in the agreement dated 19.11.2007.

The plaintiff claimed to have given a sum of Rs. 5,00,000/- to the defendant on 4.5.2009 by selling his plot. He also admitted that he had not seen the suit land. The Ld. trial Court concluded that it was quite unnatural for the plaintiff to have on the one hand received an amount of Rs.5,00,000/- from the defendant and on the same day arranged to give the defendant a sum of Rs.5,00,000/- as earnest money by selling a plot. Having received an amount of Rs.5,00,000/- there was no need for the plaintiff to have sold a plot for Rs.5,00,000/- to arrange for earnest money for agreement to sell. An endorsement could easily have been made in the agreement to sell dated 4.5.2009 that the sum of Rs.5,00,000/- which was due to be paid to the plaintiff by the defendant was being adjusted as earnest money for the agreement to sell. Thus, the Ld. Trial Court concluded that the endorsement dated 3.1.2011 regarding return of Rs.5,00,000/- to the plaintiff by the defendant appeared to be correct. Moreover, as the plaintiff had admitted in his cross-examination that he had not seen the suit land, the court found it strange that a person would enter into an agreement to sell with regard to a property which he had not even seen. The court also found it difficult to

the plaintiff would on the same day enter into an agreement to sell by receiving an earnest money at Rs.5,00,000/-. The Court also held that the filing of a criminal complaint by the plaintiff against the defendant regarding forgery of the receipt dated 3.1.2011 would not help further his case as the complaint was filed almost a year after defendant no.1 had disclosed in his written statement regarding the receipt/endorsement by the plaintiff regarding receiving the amount of Rs.5,00,000/-. The Court further held that the plaintiff had intentionally concealed the material facts namely of existence of the earlier agreement, receipt of Rs.5,00,000/- and thereby dis-entitled him for any relief. The suit was accordingly dismissed.

The Ld. Lower Appellate Court affirmed the finding of Ld. Trial Court.

Concurrent findings of fact have been returned by the Courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or not based on the evidence on the record. No question of law arises for decision in his present appeal.

Accordingly, there is no merit in the appeal and the same is dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in filing the appeal.

May 01, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

