

RSA No.3578 of 2017
DATE OF DECISION:13.11.2018

Tarsem Raj

...Appellant

Vs.

Davinder Singh through his LRs & another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satbir Rathore, Advocate
for the appellant.

AMIT RAWAL, J.(ORAL)

Appellant-plaintiff has not been able to seek discretionary relief of specific performance of agreement to sell dated 16.12.2005 in respect of land measuring 3 Kanal 15 marlas agreed to be sold for a total sale consideration of Rs.2,06,250/- against the payment of Rs.1,00,000/- as earnest money. It was urged that the sale deed was to be executed on 15.12.2006 but the defendant did not come forward despite readiness and willingness, ultimately the suit was filed on 16.12.2008.

Defendants opposed the suit and denied the agreement to sell as the property agreed to be sold was already subject matter of a mortgage with the bank and it was old transaction wherein a sum of Rs.1,00,000/- was taken for a domestic purpose. On preponderance of the evidence, the trial court found it to be a case of security and ordered for refund of the money of Rs.2 lakhs along with interest @ 6 % from the date of institution of the suit till realization. The appeal taken before the lower appellate Court was also dismissed.

Mr. Satbir Rathore, learned counsel appearing on behalf of the

appellant/plaintiff submitted that both the Courts below have given findings with regard to the execution of the sale deed but yet erroneously did not grant the discretionary relief. The agreement to sell much less readiness and willingness had been proved under Section 16(c) of the Specific Relief Act. Plaintiff had already been ready and willing to perform his part of the contract and mere mortgage of the property would not deprive the discretionary relief.

I have heard learned counsel for the appellant & appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions made by Mr. Rathore, for, the jamabandi, revenue record reflected the entry that the land was subject to mortgage with the bank. The defendant was in dire need of money and had taken a private loan of Rs.1 lakh from the plaintiff who had been ordered to recover the double amount. Even the readiness and willingness cannot be said to be subsisting as no explanation has come forth in not filing the suit immediately after the expiry of the target dated in December, 2006 as the suit has been filed in December 2008. All these factors have been examined by the Courts below, I do not find any illegality and perversity in the findings rendered by both the Courts below which are based upon appreciation of oral and documentary evidence much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, second appeal is dismissed.

13.11.2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No