

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

**RSA No.4577 of 2017 (O&M)
Date of decision : April 25, 2018**

Lakha Singh

..... Appellant

Versus

Balwinder Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.S. Rekhi, Advocate for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment dated 20.03.2017 passed by learned Addl. District Judge, Tarn Taran, affirming the judgment and decree dated 18.02.2013 passed by learned Addl. Civil Judge (Sr. Divn.), Patti, District Tarn Taran, vide which in a suit for specific performance, alternative relief for recovery of ₹16,00,000/- was granted. It was also held that the plaintiff shall be entitled to simple interest @ 9% per annum and further simple interest @ 6% per annum till the date of realization of decretal amount. Defendant No.1 was directed to make the payment within two months.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 07.05.2007 regarding the land measuring 30 kanals, 8 marlas, fully detailed in the head note of the plaint. It was claimed that defendant No.1 had agreed to sell the land to the plaintiff, vide agreement of sale dated 07.05.2007 @ ₹5,00,000/- per killa. The sale deed was to be

executed on 19.09.2008. Defendant No.1 also received ₹16,00,000/- as earnest money and delivered the possession of the suit land to the plaintiff.

Defendant No.1 in the written statement took the plea that there was no necessity to sell the land, which is the only source of livelihood of the plaintiff. It was also stated that Amarjit Singh, brother of the plaintiff also filed a civil suit for recovery of ₹4,00,000/- on the basis of a forged and fabricated pronote and receipt against the defendant. Amarjit Kaur wife of Joga Singh, brother of the defendant also filed a criminal complaint under Sections 452, 325, 326, 506 and 34 IPC against Amarjit Kaur, Balwinder Singh, Angrej Singh and Ram Dayal Singh. It was also pleaded that the present suit has been filed with malafide intention to compel the defendants to compromise in the said complaint. The agreement is forged and fabricated.

From the pleadings, following issues were framed:

“1. Whether the defendant no.1 executed an agreement to sell dated 7.5.2007 regarding land measuring 30 Kanal 8 Marla in favour of the plaintiff? OPP

2. Whether the plaintiff is entitled for specific performance of agreement to sell? OPP

3. Whether the plaintiff is entitled in the alternative to recover Rs.19,00000/- from the defendant no.1 ? OPP

4. Whether the plaintiff and defendant no.1 was owner/co sharer in possession to the extent of his share in the disputed property? OPP

5. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for ? OPP

6. Whether the suit is maintainable in the present form? OPP

7. Whether the plaintiff has locus standi to file the present suit? OPP

8. Whether cause, of action arisen to the plaintiff for filing the present suit? OPP

9. Whether the suit is bad for nonjoinder or necessary parties? OPD

10. Whether the plaintiff has not come to the court with clean hands? OPD

11. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

12. Relief.”

Learned counsel for the appellant has argued that the trial Court held that since the possession was not delivered, the Court has granted the alternative relief of recovery.

A perusal of the judgment of the trial Court shows that the transaction between the parties seems to be a loan transaction and not a case of sale and purchase of the property. Therefore, the specific performance was refused and alternative relief of recovery was allowed.

I am of the view that both the Courts below have recorded concurrent findings of facts after considering the evidence. It was found that it was basically a loan transaction, therefore, the grant of earnest money is otherwise equitable relief and has been granted. There is no ground to interfere in the concurrent findings recorded by two Courts below.

As such, the present regular second appeal is dismissed. Since, the main appeal has been dismissed, therefore, the pending application, if any also stands dismissed.

(KULDIP SINGH)
JUDGE

April 25, 2018

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No