

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

RSA No. 5466 of 2018(O&M)

Date of decision: 6.12.2018

Sucha Singh

.....Appellant

VERSUS

Sant Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Manaise, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings of fact recorded by the Courts whereby suit for possession by way of specific performance of agreement of sale dated 19.05.2006 in respect of land measuring 12 kanals out of 35 kanal 16 marlas situated in village Talwandi Bathungarh was partly decreed and the respondent/plaintiff has been allowed alternative relief of recovery of Rs.5,70,000/- with interest at the rate of 9% per annum from the date of agreement till the date of decree and future interest at the rate of 6% per annum from the date of decree till realization.

Counsel for the appellant has assailed the impugned judgments primarily on two grounds. The first submission made by counsel is that no such agreement of sale was entered into between the parties and the document in question was prepared as a security document to ensure repayment of loan of Rs.2,50,000/- obtained by the appellant

from the respondent/plaintiff. The said amount was actually returned by the appellant but the respondent did not return the document and later misused the same by filing the instant suit. In addition, it is argued that the document is purported to be attested by Gurmukh Singh son of Gulzar Singh of village Talwandi Bathungarh but the appellant examined Gurmukh Singh son of Wassan Singh DW-2 and he stated on oath that there is no person by the name of Gurmukh Singh son of Gulzar Singh in village Talwandi Bathungarh, sufficient to create a doubt regarding correctness/genuineness of agreement to sell. Another submission made by counsel is that in the agreement, there is no stipulation with regard to payment of interest on the amount, if any, to be paid by the appellant in the event of transaction having fallen through on account of fault of the appellant.

I have heard counsel for the appellant, perused the paper-book and judgments impugned.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to recapitulate that the second appeal can be admitted for hearing if it raises a question of law. Equally settled is that concurrent findings of fact cannot be interfered with even if a different view is possible on re-appreciation of evidence.

The Courts have consistently held that the appellant executed agreement to sell but the respondent/plaintiff has been allowed alternative relief of recovery of earnest money of Rs.5,70,000/- with interest, noticed hereinbefore. Indisputably, the appellant has admitted his signatures on the agreement. Once the appellant has admitted his signatures on the

agreement, it was obligatory for him to prove his plea that either his signatures were obtained on a blank paper or the document was prepared for the purpose of securing loan for repayment of Rs.2,50,000/- purportedly obtained by the appellant. The appellant has raised a plea that he had already returned the amount of Rs.2,50,000/- but the document on which his signatures were obtained was not returned. It is difficult to accept to reason that a prudent person would return the money without ensuring that the document executed for securing repayment of loan or the paper on which his blank signatures were purportedly obtained is returned in order to avoid its misuse in future. Even if the document is not returned, he would certainly insist for issuance of a receipt as an acknowledgment of return of money. Keeping in view the above, it is difficult to accept contention of the appellant that the document in question was prepared as a security document or the appellant had already returned the loan amount.

So far as testimony of Gurmukh Singh son of Wassan Singh DW-2, no such plea was raised by the appellant that no person in the name of Gurmukh Singh son of Gulzar Singh is a resident of village Talwandi Bathungarh when admittedly the appellant himself is resident of said village. No such fact was put to witnesses of the respondent/plaintiff with regard to there being no person by the name of Gurmukh Singh son of Gulzar Singh. Gurmukh Singh son of Wassan Singh is an interested witness, therefore, his testimony has rightly been ignored.

Indisputably, the agreement does not contain clause with regard to payment of interest. However, agreement provides for payment of double of earnest money in case of failure of the vendor to perform his

part of the agreement. Once the appellant has been held liable to refund earnest money, he cannot be allowed to take advantage of his wrong at the cost of plaintiff who has been deprived of use of money for the period of which reasonable interest has been allowed.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

DECEMBER 6, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no