

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6033 of 2017 (O&M)

Date of Decision: November 12, 2018

Gurdev Singh

...Appellant

Versus

Mohinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vikas Gupta, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.15821-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 300 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6033 of 2017

Appellant-defendant No.1 has not been able to defend the suit for specific performance, which been confined to refund of earnest money of ₹ 13.00 lacs entailing interest @ 12% from the date of transaction till date of suit and 6% per annum from the date of decretal of the suit till realization.

Respondent-plaintiff claimed the specific performance of the agreement to sell dated 13.11.2010 with an alternative prayer for recovery of ₹ 26 lacs, which was agreed to be paid by defendants in respect of land

measuring 37 kanals 1 marla for consideration of ₹ 5.00 lacs per killa against payment of earnest money of ₹ 13.00 lacs. 15.11.2011 was kept as a stipulated date for execution and registration of the sale deed. Since the defendants did not turn up despite the fact that the plaintiff marked his presence before the Registrar, filed the suit on 06.04.2012.

Appellant-defendant opposed the suit by denying the execution of the agreement to sell, much less receipt of earnest money and explained possibility of the thumb impressions on account of sale of agriculture produce. Defendant No.2 filed separate written statement and asserted that there was an apparent collusion between the plaintiff and defendant No.1.

On the preponderance of the evidence, the trial Court after finding the agreement to sell to be a document of security of loan transaction, ordered for refund of the earnest money and declined the discretionary relief. Appeal laid before the Lower Appellate Court was also dismissed.

Mr. Vikas Gupta, learned counsel representing the appellant-defendant submitted that the findings of fact and law arrived at by the Courts below are wholly erroneous and perverse. An agriculturist is always exploited by the commission agents as they carry blank papers, which, later on converted into agreement to sell. It has been unambiguously established on record that there was neither any agreement to sell nor any earnest money was paid or received, therefore, question of appearance before the Registrar did not arise. Once it has been found that no agreement to sell was executed, the question of receipt of earnest money was a figment of imagination.

I am afraid, the aforementioned argument is not sustainable as

no evidence has been led to belie the thumb impressions or the circumstance as to how they appeared on the agreement to sell. No doubt, the plaintiff has not been able to prove readiness and willingness or intention to enter into an agreement to sell, the finding of the courts below confining the alternative relief is just and proper approach. No sane person, on receipt of the notice of the plaint, would sit idle, rather would make all efforts in case there is an attempt of forgery on the part of the opposite party. No such effort has been made in this case, therefore, adverse inference of the receipt of amount towards the security loan is the correct appreciation.

As an upshot of the aforementioned observations, no ground for interference is made out as the judgments and decrees of the courts below do not suffer from any illegality or perversity. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No