

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

RSA No.6113 of 2017 (O&M)
Date of decision: 28.09.2018

Jarnail Singh

..... Appellant

Versus

Ram Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.V.S. Chugh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-15969-70-C-2017

Both the applications are allowed and the delay in filing and re-filing the appeal are condoned.

CM-15971-C-2017

Deficiency in Court fee has been made good. The delay, if any, is condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell on 03.11.2008. Execution of the agreement to sell dated 21.07.2005 and receipt of earnest money is not in dispute.

As per agreement to sell, the sale deed was to be executed on 10.11.2005. The plaintiff has also challenged the sale deeds executed on 19.07.2006, 19.12.2007 and 06.08.2008. The defendants contested the suit

only on the ground that the plaintiff was not ready and willing to perform his part of the contract. The defendants have taken a stand that on the target date, they were ready and willing to perform their part of the contract and hence, visited the office of the Sub-Registrar and got their affidavit attested in prove of their presence. Learned trial Court after recording a finding that the plaintiff was not ready and willing to perform his part of the contract, ordered refund of the earnest money. However, learned First Appellate Court after re-appreciating the evidence and while noticing that PW-4, Avtar Singh, a witness appearing on behalf of the plaintiff admit that the defendants were present and they demanded the amount of balance sale consideration before execution and registration of the sale deed but the plaintiff failed to pay the amount. In such circumstances, the learned First Appellate Court even declined the relief of refund of the earnest money. Once witness appearing on behalf of the plaintiff himself admits that the plaintiff could not tender the amount and because of that reason the sale deed was not executed, the finding of the Court while refunding the amount passed by the trial Court has correctly been set aside by the learned First Appellate Court.

Although, learned counsel for the appellant made sincere attempt, however, could not draw attention of the Court to any misreading or non-reading of evidence or any error in the judgment passed by the learned First Appellate Court.

In view thereof, there is no ground to interfere with the judgment passed by the learned First Appellate Court.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

28.09.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No