

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

**Regular Second Appeal No.1339 of 2019 (O&M)
Date of Decision: March 07, 2019.**

Mahender Singh

.....APPELLANT(s).

VERSUS

Gopi Chand since deceased through his LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Mittal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Vide agreement dated 27.03.2006, appellant Mahender Singh with his brother Birender Singh (defendants No.1 and 2) agreed to sell 81 kanals 10 marlas of land along with pump set, electricity meter etc. situated in village Khatodra, Tehsil and District Mohindergarh being 1/3rd share of total land measuring 277 kanals 3 marlas for a sale consideration of ₹1,01,25,000/- and received ₹5,00,000/- as earnest money. This land was not exclusively owned by defendants No.1 and 2 but they undertook the responsibility to produce defendants No.3 to 5 who are non-else than mother and sisters of defendants No.1 and 2. The plaintiff alleged that on the stipulated date i.e. on 28.04.2006, he appeared before the Sub Registrar, Mohindergarh, waited for the defendants, who did not turn up to get the sale deed executed. The defendants in order to defeat the agreement, executed the sale deed of the suit land in favour of Mewa Devi wife of Tara Chand

resident of village Nangalia Bhiwani, District Alwar (Rajasthan). In view of the above fact, the plaintiff sought recovery of ₹5,00,000/- paid as earnest money by him to defendants No.1 and 2.

Defendants No.1 and 2 (including appellant) contested the claim of plaintiff that they always remained ready and willing to perform their part of contract, as such, plaintiff is not entitled to recover the earnest money paid by him.

Defendants No. 3 to 5 denied the execution of any agreement and took the plea that they are not bound by the agreement executed by defendants No.1 and 2.

Learned counsel for the appellant-defendant No.1 has not denied that the land in question was sold by appellant and other co-owners. Regarding the authority of the appellant and his brother Birender Singh to enter into an agreement on behalf of their sisters and mother, he had conceded that the appellant or his brother Birender Singh were not having power of attorney in their favour.

From the above fact, it is apparent that agreement dated 27.03.2006 executed by the appellant Mahender Singh and his brother Birender Singh in favour of plaintiff could not be given shape as defendants No.3 to 5 did not come forward to execute the sale deed as per terms of this agreement. Though the undertaking was given by appellant and his brother Birender Singh that they will produce their sisters and mother at the time of execution of the sale deed but no evidence was produced that on 28.04.2006, appellant-defendant No.1 Mahender Singh, his brother Birender Singh, his mother Smt. Sarwan, and his sisters Smt. Shakuntla and Suresh

had appeared before the Sub Registrar, Mohindergarh. In these

circumstances, no other remedy is available to the plaintiff except to seek return of the earnest money paid by him.

Learned counsel for the appellant has argued that the plaintiff in order to prove that he appeared before the Sub Registrar, Mohindergarh on 28.04.2006, placed on record application moved before the Sub Registrar, Mohindergarh and affidavit Ex.P1/A and that affidavit was not duly stamped, as such, is not admissible in evidence.

The above argument of learned counsel for the appellant has no merits as the plaintiff was required to make out that he was ready and willing to perform his part of the agreement and lapse is on the part of defendants in not complying the terms of the agreement.

Admittedly, defendants No.3 to 5 are denying the agreement and have pleaded that they are not bound by it. This shows that appellant and his brother Birender Singh were unable to persuade defendants No.3 to 5 to abide by the terms of the agreement, as such, the agreement executed by them on their behalf (on behalf of defendants No.3 to 5) could not be specifically enforced.

In these circumstance, the Courts below have committed no error of law or fact while allowing the recovery of earnest money paid by the plaintiff to defendants No.1 and 2, calling for interference in this appeal.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

March 07, 2019.
Sachin M.