

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

RSA No.1927 of 1999 (O&M)

Date of decision : 08.01.2019

Gurmej Singh

...Appellant

Versus

Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Nagra, Advocate for the appellant.

Mr. Naresh Prabhakar, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court while granting him alternative relief of refund of ₹51,000/- alongwith interest at the rate of 6% p.a. in place of decree for specific performance of the agreement to sell after noticing that the suit has been filed after a period of almost 2 years from the date the plaintiff called upon the defendant to come, execute and register the sale deed.

Both the Courts have found that the agreement to sell and payment of the earnest money is proved. The defendant is not in appeal. However, it may be noticed that the total amount of ₹21,000/- has been paid in four installments:-

a) ₹10,000/- on 25.08.1988.

- b) ₹5,000/- on 05.09.1988.
- c) ₹2,000/- on 10.09.1988.
- d) ₹4,000/- on 20.11.1988.

As per the agreement to sell, the sale deed was to be executed and registered on redemption of the mortgage of the land by the defendant.

The defendant contested the suit and pleaded that in fact he had taken a loan of ₹5,000/- and on account of loan, his thumb impressions were taken on the blank papers.

Learned First Appellate Court in the facts of the present case found that the relief for specific performance of the agreement to sell would not be equitable and, therefore, in place of refund of ₹21,000/-, which was the total amount paid, it was ordered that the plaintiff would be entitled to ₹51,000/- as claimed in the suit as an alternative relief alongwith 6% p.a. interest.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant submitted that the suit filed by the plaintiff was not belated and it was filed within the time prescribed under the Limitation Act, 1963. Hence, he submitted that the relief for specific performance of the agreement to sell could not be denied to him only on the ground that there is unexplained delay of 1 year and 7 months from the date of last notice. He further submitted that the defendant had taken a wrong stand before the Courts that the thumb impressions were obtained on the blank papers, although, on careful perusal of the agreement

to sell, it is proved that whenever any amount was paid, the defendant had thumb marked the agreement to sell by writing an endorsement. Hence, the plea set up by the defendant stands falsified.

No doubt, the contention of the learned counsel for the appellant, to the extent that the thumb impressions were not obtained on the blank papers, is correct, however, that itself would not be sufficient to reverse the judgment of the First Appellate Court which has not recorded the finding that the agreement to sell is not genuine. However, the First Appellate Court has exercised its discretion in a particular manner. The question posed before this Court is “whether that discretion exercised should be interfered or not?”.

It is undisputed that the property in question was already under attachment under a Court decree and also mortgaged. In such circumstances, the plea taken by the defendant that he had taken a loan of ₹5,000/- appears to be more probable. Still further, it is apparent that the defendant had been receiving small amounts after short duration. Further, as per the agreement to sell, the sale deed was to be executed after one month from the date the title of the land got cleared. After the agreement, the plaintiff served a notice on the defendant on 16.11.1988 calling upon the defendant to get the land cleared. Thereafter still he paid another amount of ₹4,000/- on 20.11.1988. The defendant did not take any step but the plaintiff also slept over the matter. He once again felt contended by serving another notice on the defendant on 25.02.1989. Even after service of notice on 25.02.1989, the plaintiff did not take any step or file a suit for specific performance of the agreement to sell for a period of more than 1 year and 7 months. In such

circumstances, learned First Appellate Court has correctly exercised its discretion and granted the alternative relief to the plaintiff. This Court is conscious of the fact that the decree for ₹51,000/- has been granted, however, since the defendant is not in appeal, therefore, this Court does not intend to interfere in the same.

Keeping in view the aforesaid facts while affirming the decree for refund of ₹51,000/-, rate of interest is modified from 6% p.a. to 10% p.a. from the date of filing of the suit till realization.

In view of what has been observed above, the present appeal is partly allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No