

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-898-2006(O&M)

Date of Order:23.01.2019

RESHAM SINGH & ANR.

..Appellants

Versus

MALKIAT SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Brar, Advocate,
for the appellants.

Mr. P.S.Brar, Advocate,
for the defendants.

ANIL KSHETARPAL, J (Oral)

Defendants no.2 and 3 are in the regular Second Appeal against the order passed by the courts below ordering refund of the earnest money alongwith interest @18% per annum within two months, failing which the property shall be sold.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell.

Both the courts did not grant decree for specific performance of the agreement to sell. That decree has become final.

Counsel for defendants no.2 and 3 has argued that at the most recovery of the amount could be ordered and not sale of the property because it is beyond the prayer made in the suit. He has further submitted that the award of interest @ 18% per annum is on the higher side.

On the other hand, learned counsel for the respondent has submitted that the amount was paid in the year 1995 and because of inflation, the value of Rs.50,000/- which was paid in the year 1995 is to be

taken into consideration by this court while passing appropriate orders. He has further submitted that the order of sale is only an alternative as defendant no.1, although, was not owner on the day when the agreement to sell was entered into.

In the considered view of this court, the directions of the courts with regard to sale of the property in alternative were not called for particularly when there was neither any prayer in the suit nor there was any occasion. Accordingly the aforesaid directions are set aside.

As regards the rate of interest, this court has to balance the equities keeping in view the fact that the amount was paid in the year 1995 and defendant no.2 is son and defendant no.3 is wife of defendant no.1. Keeping in view the aforesaid facts, the decree passed by the courts below is substituted with a decree of recovery of Rs.50,000/- along with interest @ 12% per annum from the date of filing of the suit till payment.

Regular second appeal is disposed of accordingly.

January 23, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No