

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

RSA No.2171 of 2008 (O&M)

Date of decision : 08.03.2019

Gurmail Singh

...Appellant

Versus

Darshan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J. (ORAL)

On 07.02.2019 noticing that the counsel for the parties are not present, the case was adjourned with the direction to the office to inform learned counsel for the parties.

As per office report, counsels have been informed, however, no one has come forward to assist this Court. Hence, this Court has left with no choice but for to read and decide.

Plaintiff-appellant is in the Regular Second Appeal against the judgments passed by the Courts below ordering the refund of the earnest money in place of specific performance of the agreement to sell.

Both the Courts have noticed that the agreement to sell was in fact a security document for a loan. The Courts have found that before the agreement to sell dated 09.08.2004, specific performance whereof has been sought, there was another agreement dated 14.08.2003 Ex.P2 but the

plaintiff did not seek specific performance thereof. The execution of this agreement dated 14.08.2003 Ex.P2 is admitted by the plaintiff when appeared in evidence. He further admitted that another suit for specific performance of the agreement to sell is pending between Tej Singh and Darshan Singh defendant which has been decreed.

In these circumstances, the Courts have found that the agreement to sell was not intended to be acted upon and was rather a security document. The discretion exercised by the Courts is in accordance with law.

Hence, there is no ground to interfere with the judgments passed by the Courts below.

Regular Second Appeal is dismissed.

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

08.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No