

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

**RSA No.3324 of 2010 (O&M)
Date of Order: 18.03.2019**

Satbir

..Appellant

Versus

Inder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate, and
Mr. R.S.Sangwan, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for the respondents

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment and decree passed by the learned trial court.

Basically, this court is called upon to decide that “whether the plaintiff, who is brother of defendant no.1, is entitled to discretionary relief by way of specific performance of the contract in preference to the rights of defendant no.2-Inder Singh, who is not a family member?”.

Plaintiff filed the present suit on 21.08.2003, pleading that there was an agreement to sell executed by his brother defendant no.1 on 31.07.1998 agreeing to sell 22 kanals 17 marlas of land, an undivided share in the property. It was further pleaded that the possession has been delivered and the plaintiff can get the sale deed executed after giving one month's

notice through registered post.

Defendant no.1 executed the sale deed in favour of defendant no.2 with respect to land measuring 8 kanals on 01.07.2003 and therefore, the suit is being filed. Defendant no.1 admitted execution of the agreement to sell but pleaded that in fact it was a security document as he had taken a loan of Rs.2,00,000/-. Defendant no.2 pleaded that the suit is result of collusion between plaintiff and defendant no.1 as the entire effort is to get the sale deed nullified.

Learned trial court on appreciation of the evidence decreed the suit, however, learned first appellate court has reversed the finding. It may be noted here that the plaintiff has also sold land measuring 12 kanals in favour of defendant no.2. No doubt, defendant no.2 is also resident of the same village, however, it has come in evidence that defendant no.1 had also mortgaged with possession of land measuring 7 kanals 7 marlas in favour of defendant through Ex.D4 in the year 1992 and after redemption another mortgage deed was executed Ex.D6 in the year 1995. Therefore, dealing between defendants no.1 and 2 are proved. It is also proved on file that the plaintiff had also sold 12 kanals of land to defendant no.2. In these facts, the court is called upon to answer the question which has been posed earlier.

In the considered view of this court, the discretion exercised by the first appellate court, although, for different reasons is correct. The reasons are:-

- (1) that the plaintiff has not disclosed in the plaint that defendant no.1 is his real brother;
- (2) that in view of the admission of defendant no.1, no evidence has been led to prove that the stamp paper for

execution of the agreement to sell was purchased on 31.7.1998 or prior thereto;

- (3) no stamp vendor has been examined in evidence;
- (4) the agreement to sell is on plain paper with special adhesive stamp of Rs.10/- pasted and, therefore, it has been got issued from a stamp vendor. However, the register of the stamp vendor has not been produced;
- (5) Still further the register of the scribe who wrote the agreement to sell has not been produced as also the scribe has not been examined. Hence, the execution of the agreement to sell on 31.07.1998 is not proved;
- (6) Still further, no evidence has come on record which proves that the relationship between the plaintiff and defendant no.1, the brothers is strained or there is any special relationship between defendant nos.1 and 2;
- (7) Still further, learned counsel for the appellant admits that defendant no.1 has already sold his remaining property.

However, learned first appellate court has committed an error in accepting the appeal without granting alternative relief i.e. refund of the earnest money.

Learned counsel appearing for respondent no.2 does not contest this prayer.

In view thereof, while upholding the judgment and decree passed refusing discretionary relief, the decree is modified and there shall be a decree for recovery of the earnest money along with interest @9% per annum from the date of agreement to sell till realization against defendant

no.1. However, rights of defendant no.2 shall not be affected.

The regular second appeal is partly allowed.

March 18, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No