

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

**RSA No.5060 of 2016 (O&M)
Date of Decision.09.01.2019**

Kashmir Singh

...Appellant

Vs

Gurmail Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Saurabh Singh, Advocate for
Mr. Pardeep Bajaj, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the finding arrived at by the Courts below whereby the suit was decreed qua alternative relief ordering refund of earnest money of ₹2,50,000/-, though the decree qua rate of interest was modified by the lower Appellate Court from 12% to 9% per annum.

The plaintiff instituted the suit for specific performance of agreement to sell dated 03.03.2006 in respect of suit land referred to in the plaint, agreed to be sold @₹8,05,000/- per acre against the payment of earnest money of ₹2,50,000/-. The stipulated date for execution and registration of the sale deed was 29.05.2006. The plaintiff did not mark himself present before the Sub Registrar owing to ill-health but appeared on the next date whereas the defendant is stated to have appeared and sent notice dated 31.05.2006 regarding his absence, which was replied by saying that suit property was not partitioned. It was contended that the property had already been partitioned.

Learned counsel for the appellant submitted that once terms and conditions of the agreement envisaged forfeiture of the

earnest money on account of non-compliance of terms and conditions of the agreement, there was no requirement on behalf of the defendants to specifically forfeit vide legal notice dated 31.05.2006, therefore, there is abdication and illegality.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for, defendant during the subsistence of the agreement had sold the property in December 2006 to third party. In such circumstances, he cannot be permitted to forfeit the earnest money received in pursuance of agreement to sell, which had been admitted. There had been exchange of correspondence immediately after expiry of the target date between the parties, which established that parties to the *lis* were alive to the situation and one of them had intention to purchase. The Courts below were alive to the situation with regard to creation of third party rights and therefore, rightly discretionary relief under Section 20 of the Specific Relief Act was declined and confined to the alternative relief of refund of earnest money and the same cannot be faulted with.

I do not find any illegality and perversity in the finding rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No