

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

-.-

RSA 5889 of 2016

Date of decision: 24.09.2019

Raj Karan

.....Appellant

Versus

Manohar

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Akshay Kumar Goel, Advocate
for the appellant

Mr. Anil Ghanghas, Advocate
for the respondent

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 07.04.1985 in respect of land measuring 2 kanal 4 marlas, detailed in para 1 (un-numbered) of the judgment of trial Court was partly decreed and the appellant has been allowed alternative relief of recovery of double of the earnest money along with interest at the rate of 6% per annum from the date of institution of suit till realization, by the trial Court vide judgment and decree dated 21.08.2013 but in appeal, the appellate Court has modified the judgment and decree passed by the trial Court to the extent that refund of double of the earnest money has been allowed with interest @ 8% per annum from the date of execution of agreement to sell dated 07.04.1985.

Perusal of the judgments passed by the Courts would reveal that the Courts have refused to grant principal relief of specific performance of agreement to sell dated 07.04.1985 as the suit has been instituted in the year 2009 in respect of aforesaid agreement, meaning thereby that the suit was filed after about 24 years from the date of agreement to sell in question. There is no dispute about settled position in law that specific performance is a relief to be allowed by the Court in exercise of its discretionary jurisdiction but the Court has to apply its mind in a judicious manner. In the given facts and circumstances that the appellant/plaintiff did not institute suit for more than two decades since the agreement to sell was executed between the parties, I do not find any reason to interfere in the discretion exercised by the Courts, denying specific performance of the agreement and allowing alternative relief of recovery i.e. double of the earnest money along with interest. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts that would call for intervention in second appeal.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

24.09.2019
Mohan Bimbra

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