

RSA-6652-2016 (O&M)

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

**RSA-6652-2016 (O&M)
Date of decision : 12.03.2019**

Sawinder Singh

... Appellant

Versus

Sardara Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-17389-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 01 day in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The present regular second appeal is at the instance of the appellant-defendant, who has not been successful in defending the suit seeking recovery of ₹2,63,000/- i.e. principal amount of ₹ 2,50,000/- and interest amount of ₹13,000/- @ 1% per month, decreed by the trial Court and affirmed in appeal.

The plaintiff sought the recovery of the aforementioned amount on the premise that the defendant had entered into agreement to sell dated 31.07.2007 in respect of land OK-1-½M agreed to be sold for a

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consideration of ₹9,50,000/- against the payment of ₹2,50,000/- as earnest money. The defendant did not disclose the correct facts as he was owner in possession of one plot measuring 20' x 20', but no partition was ever effected between the co-owners and also with regard to the restrictions of unregulated development as per the Punjab Scheduled Roads and Controlled Areas Restriction of Un-regulated Development Act, in such circumstances, asked for the refund of the amount, which was disputed.

The defendant opposed the suit and attempted to fasten the blame on the plaintiff being not ready and willing to perform his part of the agreement to sell.

The plaintiff in support of the pleadings examined three witnesses and brought on record Ex.P1 to Ex.P11, whereas the defendant also examined three witnesses and tendered in evidence Ex.DA to Ex.DC.

Mr. Ramesh Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the plaintiff was not ready and willing to perform the part of the agreement to sell, as he had the knowledge of the un-partitioned land and the possession. There was no misrepresentation. The parties were bound by the terms and conditions of the agreement to sell. The amount stood forfeited and the simpliciter suit for recovery, in the absence of mandatory injunction, was not maintainable.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that it is established, as per the evidence brought on record, that the suit property was neither partitioned nor possession of the suit land, whereas the contents of the agreement to sell revealed otherwise. This was a misrepresentation to the plaintiff and in

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such circumstances, the agreement to sell had become un-executable and compelling the plaintiff to seek refund of the earnest money. A person, who misrepresents the parties by alluring him to enter into agreement to sell, cannot be permitted to forfeit the amount.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference. Resultantly, the present second appeal is dismissed.

12.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**