

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

**RSA No.5516 of 2015 (O&M)
Date of Order:17.01.2019**

Jeet Singh

..Appellant

Versus

Daljit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate,
for the appellant.

Mr. S.S.Rangi, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

In the present case, this court is only examining “whether the discretion exercised by the courts below while granting a decree for possession by way of specific performance of the agreement to sell is correct or not?”

Findings of the courts with regard to execution of the agreement to sell and payment of earnest money stands proved and require no interference.

Defendant in response to the suit for possession by way of specific performance of the agreement to sell has pleaded that he had taken a loan of Rs.1,00,000/- from the son of the plaintiff and his signatures were obtained on various blank papers. He has further pleaded that the interest

was regularly being paid and even out of principal, Rs.75,000/- has been paid. It was further pleaded that the remaining amount of Rs.25,000/- was also paid in April, 2004 and the plaintiff handed over to him photocopies of the agreements executed by the defendant in favour of the plaintiff and his family members dated 12.06.1998, 03.06.1999, 20.06.2000, 25.05.2001 and 15.05.2002. Defendant also pleaded that he has been issued a receipt dated 13.05.2002 after re-payment of loan amount which he borrowed from daughter-in-law of the plaintiff.

After hearing arguments at length, this court on 11.12.2018 had recorded the contentions of learned counsel for the appellant which reads as under:-

“Arguments have been heard at length.

Learned counsel for the appellant has drawn attention of the court to the 5 previous agreements between the parties or their family members dated 12.06.1998, 03.06.1999, 20.06.2000, 25.05.2001 and 15.05.2002, which have not been disclosed in the plaint. He has also drawn attention of the court to the statement of PW3 Santokh Singh, who admits that agreement dated 12.06.1998 bears his signatures as well as signatures of other attesting marginal witness, namely, Ajit Singh.

With regard to second agreement, which is mark 'B', he does not either admit or deny his signatures because he states that he cannot tell whether documents mark “B” bears my signatures.

Learned counsel has further drawn attention of the court to the suggestion given to the defendant-appellant, which is extracted as under:-

“It is wrong to suggest that the alleged photocopies dated 12.6.1998, 3.6.1999, 20.6.2000, 25.5.2001, 15.5.2000, 13.5.2000 have been procured by me with malafide intentions.”

Learned counsel for the respondents prays for and is granted time to seek instructions whether plaintiffs-respondents are agreeable to receive back the amount with reasonable rate of interest.

Adjourned to 14.12.2018. To be listed in urgent.”

Although, opportunity was given to the respondents-plaintiffs but counsel for the respondents-plaintiffs has made a statement that the plaintiffs do not accept to receive back the amount along with appropriate rate of interest.

For the reasons recorded in the order dated 11.12.2018, which has been reproduced above and also for the reason that there is grave suspicion about the nature of transaction as to whether it was a security for loan or genuine agreement to sell for sale of the property, the discretionary relief of specific performance does not deserves to be granted.

Still further plaintiffs in his plaint have not disclosed these facts. Although, the documents (various agreements to sell) have not been exhibited, however, photocopies thereof are on record which create a doubt about the nature of transactions between the parties particularly when all these documents bears signatures of same marginal witnesses(two).

Learned counsel for the appellant has pointed out that the sale deed in execution of the decree has been executed and registered with the help of the Court. Once the decree has been substituted, sale deed would

loose its significant validity and would have no force in the eyes of law.

Keeping in view the aforesaid facts, the decree passed by the learned trial court is substituted and in its place there shall be decree for refund of earnest money along with interest @ 7.5% from the date of agreement to sell till payment.

Regular Second appeal stands disposed of accordingly.

C.M.No.17996-C-2018

Prayer in this application is for bringing on record the legal representatives of Jeet Singh, appellant.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

January 17, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No