

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

RSA No.5264 of 2017 (O&M)

Date of decision : 28.02.2019

Manjit Singh (deceased) through his LRs and another

...Appellants

Versus

Manpreet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhriagu Dutt Sharma, Advocate for the appellants.

Mr. Sunil Garg, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the judgments passed by both the Courts below.

Total dispute is for recovery of ₹2,72,000/- out of which ₹2,00,000/- is the principal amount. Defendants at the relevant time were agreement holders from the original owner Gopal Singh. Plaintiffs agreed to purchase land measuring 12 kanals 7 marlas out of the land which under a agreement to purchase dated 10.05.2006, the defendants had agreed to purchase. Plaintiffs had paid ₹2,00,000/- as earnest money to the defendants. In the agreement to sell, it was provided that another sum of ₹33,00,000/- shall be payable on 15.07.2006 by the plaintiffs to the defendants when the defendants would make a provision for giving him possession of a passage. Admittedly, plaintiffs neither paid the amount nor

offered to pay the amount.

Plaintiffs filed a suit for recovery without filing a suit for specific performance of the agreement to sell on 11.05.2009 pleading that they are entitled to refund of the amount.

Both the Courts have held that since defendants were not able to get the sale deed in their favour and, therefore, the defendants were not entitled to sell the property. Hence, the plaintiffs are entitled to refund of the amount.

Learned counsel for the appellants while drawing attention of the Court to the agreement to sell has submitted that at the time of entering into the agreement to sell, plaintiffs knew that the defendants were only agreement holders from Gopal Singh. It is further provided in the agreement to sell entered into between the plaintiffs and the defendants that upto 15.07.2006, another sum of ₹33,00,000/- shall have to be paid by the defendants to the plaintiff when the plaintiffs would arrange to deliver the possession of the passage. Plaintiffs have neither pleaded nor led any evidence to prove that they offered to pay the amount or they actually paid the amount aforesaid.

Learned counsel for the appellants has further drawn attention of the Court to the statement of the plaintiff, who has appeared as PW1 and admitted that he has only paid ₹2,00,000/- and he was required to pay ₹33,00,000/- on 15.07.2006 but he never got prepared any demand draft to prove that he had sufficient resources to pay the due amount on that day. He also goes on to admit that he never gave any notice to defendants or lodged any complaint with the police. Thus, it is obvious that the plaintiffs woke up

from the slumber and filed this suit after a period of more than 2 years. It was the plaintiffs who failed to perform their part of the contract i.e. pay or after to pay Rs.33,00,000/- which was first step for performance of the agreement to sell. Once plaintiffs neither paid the amount nor made any effort, plaintiffs cannot be held entitled to refund of the amount.

Hence, judgments passed by both the Courts below are not sustainable and, therefore, set aside. Suit filed by the plaintiffs is dismissed. Resultantly, Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No